8–22–05 Monday
Vol. 70 No. 161 Aug. 22, 2005

Pages 48839–49152

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 70 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 161

Monday, August 22, 2005

Agricultural Marketing Service
RULES
Kiwifruit grown in—
California, 48839–48842
PROPOSED RULES
Irish potatoes grown in—
Colorado, 48903–48904
Nectarines and peaches grown in—
California, 48900–48903

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48977–48979

Army Department
See Engineers Corps
NOTICES
Inventions, Government-owned; availability for licensing, 48938

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Kentucky, 48934

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
San Francisco Bay, CA, 48872–48874
PROPOSED RULES
Drawbridge operations:
Oregon, 48929–48931

Commerce Department
See Economic Analysis Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Corporation for National and Community Service
RULES
AmeriCorps National Service Program; provisions and requirements
Correction, 48882

Defense Department
See Army Department
See Engineers Corps
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48937
Meetings:
Defense Acquisition University Board of Visitors, 48937
Science Board task forces; correction, 48937

Delaware River Basin Commission
PROPOSED RULES
Water Quality Regulations, Water Code, and Comprehensive Plan:
Lower Delaware River; special protection waters classification, 48923–48924

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Lilly Del Caribe, Inc., 48979
Navinta LLC, 48980
Roche Diagnostics Operations, Inc., 48980
Stepan Company, 48980
Varian, Inc., 48980–48981

Economic Analysis Bureau
PROPOSED RULES
International services surveys:
BE-11; Annual survey of U.S. direct investment abroad, 48920–48923

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48939
Grants and cooperative agreements; availability, etc.:
Postsecondary education—
Graduate assistance in areas of national need, 48940–48943

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Natural gas exportation and importation:
Citizens Energy Corp. & Citizens Resources Corp., et al., 48943–48944
ConocoPhillips Energy Marketing Corp., et al., 48944–48946

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
Hudson-Raritan Estuary, Liberty State Park, NJ, 48938
Montauk Point Storm Damage Reduction Project, NY, 48938–48939

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Louisiana, 48880–48882
North Carolina, 48874–48877
Texas, 48877–48880
PROPOSED RULES
Radiation protection programs:
Yucca Mountain, NV, 49014–49065

Water supply:
National primary drinking water regulations—
Unregulated Contaminant Monitoring Regulation for Public Water Systems; revision, 49094–49138
NOTICES
Meetings:
Eighth Conference on Air Quality Modeling, 48949–48950
Reports and guidance documents; availability, etc.:
Approaches for the Application of Physiologically-Based Pharmacokinetic Models and Supporting Data in Risk Assessment, 48950–48952
Institutional Controls Draft Data Standard, 48952

Farm Service Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48932

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 48850–48852
Bombardier, 48852–48857
McDonnell Douglas, 48848–48850
Tiger Aircraft LLC, 48857–48859
Airworthiness standards:
Special conditions—
Gulfstream Model G150 airplane, 48842–48844
McDonnell Douglas Model MD-10-10F and MD-10-30F airplanes, 48844–48848
Class E airspace, 48859–48860
PROPOSED RULES
Airworthiness directives:
Airbus, 48911–48914
Boeing, 48904–48906
Bombardier, 48908–48911
CENTRAIR, 48918–48920
Empresa Brasileira de Aeronautica S.A.(EMBRAER), 48906–48908
Pilatus Aircraft Ltd., 48914–48918
NOTICES
Exemption petitions; summary and disposition, 49008–49009
Meetings:
RTCA, Inc., 49009–49010

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 48946–48947
Applications, hearings, determinations, etc.:
Southern California Edison Co., 48946

Federal Reserve System
RULES
Community Reinvestment Act; implementation:
Small banks; lending, investment, and service tests; eligibility requirements evaluation
Correction, 48842
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 48952–48953
Permissible nonbanking activities, 48953

Fish and Wildlife Service
RULES
Endangered and threatened species:
Beluga sturgeon
Correction, 48896–48897
PROPOSED RULES
Migratory bird hunting:
Late-season migratory bird hunting regulations, 49068–49091

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Flunixin, 48868
NOTICES
Meetings:
Critical path initiative; developing prevention therapies; approaches and obstacles; workshop; correction, 48962

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Ravalli County, 48932

General Services Administration
RULES
Acquisition regulations:
Board of contract appeals; payment of awards, 48882–48883
NOTICES
Acquisition regulations:
General Services Administration Acquisition Regulations; addition, 48953–48961
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48937

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
Human Research Protections, Secretary's Advisory Committee, 48961–48962

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48962
Meetings:
Childhood Vaccines Advisory Commission, 48962–48963
Interdisciplinary Community-Based Linkages Advisory Committee, 48963
Rural Health and Human Service National Advisory Committee, 48963–48964

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 48947–48949

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48970
Grants and cooperative agreements; availability, etc.:
Discretionary programs (SuperNOFA), 48970–48972
Low-income housing:
Difficult development areas and qualified census tracts; statutorily mandated designation for tax credit, 49140–49151

Indian Affairs Bureau
NOTICES
Environmental statements; notice of intent:
Greenville Rancheria Trust Acquisition and Casino Project; Tehama County, CA; meeting, 48972
Pine Ridge Indian Reservation, SD, 48972–48973

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Taxpayer Relief Act—
Roth IRAs, 48868–48871
PROPOSED RULES
Income taxes:
Taxpayer Relief Act—
Roth IRAs, 48924–48925
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 49010–49011
Meetings:
Art Advisory Panel, 49011
Taxpayer Advocacy Panels, 49010–49012
Senior Executive Service:
Performance Review Boards; membership, 49012

International Trade Administration
NOTICES
Export trade certificates of review, 48934–48935

International Trade Commission
NOTICES
Import investigations:
Granular polytetrafluoroethylene resin from—
Italy and Japan, 48973
Probable economic effect of the reduction of US tariffs; advice for certain items, 48974
Reports and guidance documents; availability, etc.:
Advice concerning possible modifications to the Generalized System of Preferences; 2005 review, 48975–48976
U.S.-Generalized System of Preferences; possible modifications, 48976–48977

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48981–48984

Labor Department
See Mine Safety and Health Administration

Mine Safety and Health Administration
RULES
Fees for testing, evaluating and approval of mining products
Correction, 48871–48872
PROPOSED RULES
Fees for testing, evaluating and approval of mining products
Correction, 48925
NOTICES
Petitions for safety standards modifications; summary of affirmative decisions, 48984–48985

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities; proposals, submissions, and approvals, 48937

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Occupant crash protection—
Seat belt assemblies, 48883–48896

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 48964
National Center for Complementary and Alternative Medicine, 48965
National Center for Research Resources, 48964–48965
National Institute of Allergy and Infectious Diseases, 48968
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 48967–48969
National Institute of Child Health and Human Development, 48968
National Institute of Dental and Craniofacial Research, 48965–48966
National Institute of Diabetes and Digestive and Kidney Diseases, 48966–48967
National Institute of Neurological Disorders and Stroke, 48969
National Institute on Aging, 48968–48969
National Institute on Alcohol Abuse and Alcoholism, 48965
National Institute on Deafness and Other Communication Disorders, 48967–48968
Scientific Review Center, 48969–48970

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic sea scallop, 48860–48868
West Coast States and Western Pacific fisheries—
Pacific whiting, 48897–48898
NOTICES
Committees; establishment, renewal, termination, etc.:
Monitor National Marine Sanctuary Advisory Council, 48935
Meetings:
Commercial Remote Sensing Advisory Committee, 48935–48936

North Pacific Fishery Management Council, 48936

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Southern Nuclear Operating Co., Inc., 48985–48987

Personnel Management Office
RULES
Retirement:
Federal Employees Retirement System—
Death benefits and employee refunds, 48839
PROPOSED RULES
Prevailing rate system, 48899–48900
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48987–48988
Excepted service; positions placed or revoked, 48988–48990

Rural Business-Cooperative Service
NOTICES
Meetings:
Cooperative Research Agenda, 48932–48933

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 48933–48934

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 48990–48991
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 48991–48992
Boston Stock Exchange, Inc., 48992–48994
Chicago Board Options Exchange, Inc., 48995–48996
International Securities Exchange, Inc., 48996–48997
New York Stock Exchange, Inc., 48997–49000
Pacific Exchange, Inc., 49000–49004
Philadelphia Stock Exchange, Inc., 49004–49006
Applications, hearings, determinations, etc.:
CBOE Futures Exchange, LLC, 48990

State Department
NOTICES
Art objects; importation for exhibition:
Hesse: A Princely German Collection, 49006
Clean Diamond Trade Act; participating countries eligible for trade in rough diamonds; list, 49006–49007

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Missouri, 48925–48929

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
NOTICES
Standard time zone boundaries:
Indiana; correction, 49007–49008

Treasury Department
See Internal Revenue Service

Separate Parts In This Issue

Part II
Environmental Protection Agency, 49013–49065

Part III
Interior Department, Fish and Wildlife Service, 49067–49091

Part IV
Environmental Protection Agency, 49093–49138

Part V
Housing and Urban Development Department, 49139–49151

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
841.....48839
842.....48839
843.....48839
Proposed Rules:
532.....48899
7 CFR
920.....48839
Proposed Rules:
916.....48900
917.....48900
948.....48903
12 CFR
229.....48842
14 CFR
25 (2 documents) 48842, 48844
39 (5 documents) 48848, 48850, 48852, 48854, 48857
71 (2 documents) 48859, 48860
Proposed Rules:
39 (6 documents) 48904, 48906, 48908, 48911, 48914, 48918
15 CFR
902.....48860
Proposed Rules:
806.....48920
18 CFR
Proposed Rules:
410.....48923
21 CFR
522.....48868
26 CFR
1.....48868
Proposed Rules:
1.....48924
30 CFR
5.....48871
15.....48871
18.....48871
19.....48871
20.....48871
22.....48871
23.....48871
27.....48871
28.....48871
33.....48871
35.....48871
36.....48871
Proposed Rules:
5.....48925
15.....48925
18.....48925
19.....48925
20.....48925
22.....48925
23.....48925
27.....48925
28.....48925
33.....48925
35.....48925
36.....48925
925.....48925
33 CFR
165.....48872
Proposed Rules:
117.....48929
40 CFR
52 (3 documents) 48874, 48877, 48880
Proposed Rules:
141.....49094
197.....49014
45 CFR
2510.....48882
2520.....48882
2521.....48882
2540.....48882
2550.....48882
48 CFR
6101.....48882
49 CFR
571.....48883
50 CFR
17.....48896
660.....48897
Proposed Rules:
20.....49068

Rules and Regulations

Federal Register
Vol. 70, No. 161
Monday, August 22, 2005

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

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 841, 842, and 843

RIN 3206–AK57

Federal Employees' Retirement System; Death Benefits and Employee Refunds

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing Final rules that revise the table of reduction factors for early commencing dates of survivor annuities for spouses of separated employees who die before the date on which they would be eligible for unreduced deferred annuities, and to revise the annuity factor for spouses of deceased employees who die in service when those spouses elect to receive the basic employee death benefit in 36 installments under the Federal Employees' Retirement System (FERS) Act of 1986. These rules are necessary to conform the tables to the previously published economic assumptions adopted by the Board of Actuaries.

DATES: This final rule is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Karla Yeakle, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On December 1, 2004, we published (at 69 FR 69805) interim regulations to revise the normal cost percentage under the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99–335, 100 Stat. 514, based on changed economic assumptions and demographic factors adopted by the Board of Actuaries of the Civil Service Retirement System. Those changed economic assumptions (principally the change in expected investment return from 6.75 percent to 6.25 percent) require corresponding changes in factors used to produce actuarially equivalent benefits when required by the FERS Act. The revised factors were effective on October 1, 2004. To implement these changes in factors, we issued interim regulations on December 1, 2004. At that time we also requested comments on the interim regulations. We received no comments. Accordingly we are now adopting the interim regulation as final without change.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect retirement payments to retired employees, spouses, and former spouses.

List of Subjects in 5 CFR Parts 841, 842 and 843

Administrative practice and procedure, Air traffic controllers, Alimony, Claims, Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Linda M. Springer,

Director.

■ Accordingly, the Office of Personnel Management adopts its interim regulations amending 5 CFR parts 841, 842, and 843 published at 69 FR 69805 on December 1, 2004, as final rule without change.

[FR Doc. 05–16592 Filed 8–19–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV05–920–1 FR]

Kiwifruit Grown in California; Relaxation of Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the pack requirements for California kiwifruit under the California kiwifruit marketing order (order). The order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule requires that kiwifruit marked as Size 39 or 42 not vary in diameter by more than 3/8 inch, regardless of pack type. In addition, the three tables that are currently under the pack regulation will be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

EFFECTIVE DATE: August 23, 2005.

FOR FURTHER INFORMATION CONTACT: Shereen Marino, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in

conformance with Executive Order 12866.

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

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

This rule revises the pack requirements for California kiwifruit under the order. This rule requires that Size 39 and Size 42 fruit not vary in size by more than 3/8 inch, regardless of pack type. The Committee unanimously recommended these changes at its March 2, 2005, meeting.

Currently, three tables are included under the pack regulation to designate sizes and list the size variances permitted for the different pack arrangements used in the industry. This rule consolidates the three tables into one table that lists size designations with applicable size variation tolerances for kiwifruit regardless of the pack or container type. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations.

Section 920.52 of the order authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's regulations specifies pack requirements for fresh shipments of California kiwifruit. Pack requirements include the specific arrangement, size, weight, count, or grade of a quantity of kiwifruit in a particular type and size of container.

Section 920.302 of the order's regulations specifies grade, size, pack, and container regulations for the fresh shipment of California kiwifruit. This section contains three tables regarding pack. One table in § 920.302(a)(4)(iii) specifies size designations for kiwifruit packed in volume fill containers (such as bags or bulk containers). These size designations are based on the maximum number of pieces of fruit per 8-pound sample. Two tables in § 920.302 specify size variation tolerances. One table in § 920.302(a)(4)(ii)(B) is applicable to volume fill containers and lists size designations with the corresponding size variation tolerance listed by diameter. The other table in § 920.302(a)(4)(ii)(A) is applicable to kiwifruit packed in trays and lists the variation tolerance in diameter by count (number of pieces of kiwifruit packed in a tray).

Since 1989, there have been two different size variation tolerances for Size 39 and Size 42 kiwifruit, depending on style of pack. The majority of Size 39 and Size 42 kiwifruit is initially packed in volume fill containers and must meet a size variation tolerance of 3/8-inch. It has become more common for some of the fruit to then be restyled (repacked) into trays. In fact, the current estimate is that 10 percent of the crop is restyled into trays. All kiwifruit restyled within the production area must be reinspected.

Restyling fruit from volume fill containers into trays may require resizing the fruit because the size variation tolerance differs for the two containers. Fruit packed in trays that is 39 and 42 count must meet a size variation tolerance of 1/4-inch. In order to meet the more restrictive 1/4-inch tolerance, handlers must resize the fruit. Resizing is costly and slows down the restyling process. In addition, during the initial packing process, pack styles can change several times daily depending upon market demand. Resizing may also reduce returns to growers. Thus, the Committee recommended changing the size variation requirement for Size 39 and Size 42 kiwifruit from 1/4 inch to 3/8 inch when packed in cell compartments, cardboard fillers, or molded trays.

The Committee also recommended revising the regulations to specify one standard size variation tolerance of 3/8-inch for Size 39 and Size 42 kiwifruit, regardless of whether the fruit is packed in volume fill containers or trays. To facilitate this change the three tables under the pack regulation will be consolidated into one that lists both size designations and their applicable size variation tolerances for fruit packed in all container types. Additionally, clarifying language that was inadvertently omitted from under the first table (Count) in prior rulemaking will be restored. The language clarifies that the average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds. This rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations. Section 920.302 is revised accordingly.

Final Regulatory Flexibility Analysis

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

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

There are approximately 45 handlers of California kiwifruit subject to regulation under the marketing order and approximately 275 growers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $6,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000. None of the 45 handlers subject to regulation have annual kiwifruit sales of at least $6,000,000. In addition, six growers subject to regulation have annual sales exceeding $750,000. Therefore, a majority of the kiwifruit handlers and growers may be classified as small entities.

This rule relaxes the pack requirements currently specified in § 920.302 for kiwifruit. The rule creates one standard size variation tolerance to be applied uniformly to all container types. Additionally, the three tables currently under the pack regulation will be consolidated into one. By allowing handlers to utilize a single table for kiwifruit size designations and size variation tolerances, regardless of pack or container, this rule is expected to simplify requirements for the industry, reduce handler packing costs, increase grower returns, and increase flexibility in handler packing operations. Authority for this action is provided in § 920.52 of the order, which authorizes the establishment of pack requirements.

The impact of this change on handlers was discussed by the Committee. Approximately 10 percent of shipments are restyled from a volume fill container to a tray pack. Based on an industry survey, restyling costs an average of $.07 per tray equivalent. Since there will no longer be a need for handlers to resize the fruit when restyling from a volume fill container to a tray pack, it is estimated that restyling costs per tray equivalent will decrease to $.035 per tray equivalent. The average of Size 39 and 42 fruit sold over a 6-year period is approximately 22 percent of the crop. Current restyling costs are obtained by calculating 10 percent of the average of Size 39 and 42 fruit (22 percent of the total packout) and multiplying that number by the estimated cost per tray equivalent.

Based on a total crop of 6 million tray equivalents (te) the cost savings for repacking/restyling will be around $9,000. This amount is obtained by subtracting $9,240 from $18,480 from the table below, which is the difference between the restyling costs incurred when fruit must be resized and restyling costs when fruit does not need to be resized.

Total Crop Sold (te)—6,000,000
Total Size 39 & 42 fruit (22% of total crop) (te)—1,320,000
Estimated number of Size 39 & 42 fruit restyled annually from bulk to trays (10% of total 39/42's packed) (te)—132,000
Approximate cost to restyle Sizes 39 and 42 fruit without rechecking/resizing for size variation difference (0.07 cents per te)—$9,240
Approximate cost to restyle Size 39 and 42 fruit that requires resize for size variation difference (0.14 cents per te)—$18,480

This change reduces packing costs since handlers will no longer need to resize fruit to the more restrictive ¼-inch tolerance in the restyling (repacking) process. The packing process will also move more rapidly since frequent resizing adjustments are no longer necessary. Fewer resizing adjustments may also mean increased returns to growers.

The Committee considered the alternative of not revising the rule, but this was not considered viable because of the confusion currently experienced because of differences in the size variation tolerance in the different packs and the resulting increased packing costs. The Committee reasoned that the only viable alternative was to create a standard size variation tolerance regardless of pack.

This rule creates one size variation standard that will be applied uniformly to all container types as well as consolidate the three tables currently in the pack regulation of the order into one table. Accordingly, these actions do not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. In fact, this action will relax the current requirements under the U.S. Standards for Grade of Kiwifruit (7 CFR 51.2335 through 51.2340) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627) with regard to ''fairly uniform in size.''

In addition, the Committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the March 2, 2005, meeting, was a public meeting and all entities, both large and small, were encouraged to express their views on these issues.

A proposed rule concerning this action was published in the **Federal Register** on June 22, 2005 (70 FR 36060). Copies of the rule were mailed or sent via facsimile to all Committee members and kiwifruit handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period ending July 12, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

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

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

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this rule should be in place by September 10, 2005, which is prior to the start of the new shipping season. This rule relaxes requirements currently in effect. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 920.302, paragraph (a)(4) is revised to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) *Pack Requirements.* (i) Kiwifruit packed in containers with cell compartments, cardboard fillers, or molded trays shall be of proper size for the cells, fillers, or molds in which they are packed. Such fruit shall be fairly uniform in size.

(ii) (A) Kiwifruit packed in any container shall be subject to the size designation, maximum number of fruit per 8-pound sample, and the size variation tolerance specified as follows:

SIZE DESIGNATION AND SIZE VARIATION CHART

Column 1 size designation	Column 2 maximum number of fruit per 8-pound sample	Column 3 size variation tolerance (diameter)
18 or larger	25	1/2-inch (12.7 mm).
20	27	1/2-inch (12.7 mm).
23	30	1/2-inch (12.7 mm).
25	32	1/2-inch (12.7 mm).
27/28	35	1/2-inch (12.7 mm).
30	39	1/2-inch (12.7 mm).
33	43	3/8-inch (9.5 mm).
36	46	3/8-inch (9.5 mm).
39	49	3/8-inch (9.5 mm).
42	53	3/8-inch (9.5 mm).
45 or smaller	55	1/4-inch (6.4 mm).

(B) The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(C) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container, (except that for Sizes 42 and 45 kiwifruit, the tolerance, by count, in any one container, may not be more than 25 percent) may fail to meet the size variation requirements of this paragraph.

(iii) All volume fill containers of kiwifruit designated by weight shall hold 19.8-pounds (9-kilograms) net weight of kiwifruit unless such containers hold less than 15 pounds or more than 35 pounds net weight of kiwifruit.

* * * * *

Dated: August 17, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–16571 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation BB; Docket No. R–1225]

Community Reinvestment Act; Correction

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; correction.

SUMMARY: The Board of Governors is correcting the Paperwork Reduction Act information that it provided in connection with a final rule amending certain provisions of Regulation BB, which was published in the **Federal Register** of August 2, 2005.

DATES: The final rule is effective on September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Michelle E. Long, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION: The Board published a final rule in the **Federal Register** of August 2, 2005 (70 FR 44256), that amended certain provisions of Regulation BB, effective September 1, 2005. The Paperwork Reduction Act section for this final rule included detailed information about the paperwork burden estimate for State Member Banks that are required to comply with the regulation. Inadvertently, the Board omitted from this Paperwork Reduction Act calculation the burden hours for a couple of optional requirements. This document corrects the error by revising the burden estimate on page 44265, in the second column, as follows:

Board:

Number of Respondents: 914.

Estimated Time per Response: Small business and small farm loan register, 219 hours; consumer loan data, 326 hours; other loan data, 25 hours; assessment area delineation, 2 hours; small business and small farm loan data, 8 hours; community development loan data, 13 hours; HMDA out-of-MSA loan data, 253 hours; data on lending by a consortium or third party, 17 hours; affiliated lending data, 38 hours; request for designation as a wholesale or limited purpose bank, 4 hours; and public file, 10 hours.

Total Estimated Annual Burden: 131,662 hours.

By order of the Board of Governors of the Federal Reserve System, August 15, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–16459 Filed 8–19–05; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM325; Special Conditions No. 25–294–SC]

Special Conditions: Gulfstream Model G150 Airplanes; Side-Facing Single-Occupant Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Model G150 airplanes. These airplanes will have a novel or unusual design feature(s) associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 9, 2005. Comments must be received on or before October 6, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No.

NM325, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM325. 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: John A. Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2785; facsimile (425) 227–1232.

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 approval design 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 rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. 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. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM325.'' The postcard will be date stamped and returned to the commenter.

Background

On September 22, 2002, Gulfstream Aerospace LP (GALP), Ben Gurion Airport, Tel Aviv, Israel, applied for a type certificate for its new Model G150 airplane. The Gulfstream Model G150 is a twin-engine, pressurized executive jet airplane with standard seating provisions for 11 passenger/crew and allowance for baggage and optional equipment. This airplane will have a maximum takeoff weight of 26,000 pounds and will have two aft-mounted Honeywell TFE 731–40AR–200G engines.

Type Certification Basis

Under the provisions of 14 CFR 21.17, GALP must show that Gulfstream Model 150 airplanes meet the applicable provisions of part 25, effective February 1, 1965, as amended by Amendment 25–1 through Amendment 25–107.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Gulfstream Model 150 airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Model 150 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36; and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

Gulfstream Model G150 airplanes offer interior arrangements that include single-occupant side-facing seat installations. One arrangement includes an aft right-hand (RH) toilet installation, which will be approved for occupancy during taxi, takeoff, and landing. The belted toilet seat is a single-occupant side-facing seating system located in the aft, RH portion of the cabin. It consists of a toilet assembly, toilet cabinet, forward partition, contact pad, and restraint system (lap belt).

The existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785. The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

Discussion

Section 25.785(b), ''Seats, berths, safety belts, and harnesses,'' requires that ''each seat * * * at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562.'' Additionally, § 25.562, ''Emergency landing dynamic conditions,'' requires dynamic testing of all seats occupied during takeoff and landing. The relative forces and injury mechanisms affecting the occupants of side-facing seats during an emergency landing are different from those of standard forward- or aft-facing seats, or seats equipped with conventional restraint systems.

Side-facing Seats: Amendment 25–64, which adopted § 25.562, enhances occupant protection during emergency landing conditions. Although the rule was written with forward- and aft-facing seats in mind, the orientation of the seat does not change the relevant test conditions, and the rule applies to all seats regardless of orientation.

The dynamic test conditions included in § 25.562 are directly applicable to side-facing seats. However, for injury pass/fail criteria, the orientation of the seat may be significant. For forward-, aft-, and side-facing seats the injury criteria are currently limited to head, spine, and femur loads. The head and lumbar loads are critical but the femur load is not critical. For a side-facing seat, additional injury parameters may be identified and evaluation of those parameters would be necessary to provide an acceptable level of safety.

When evaluating side-facing seats the following should be taken into consideration:

1. The isolation of one occupant from another. Occupants should not rely on impact with other occupants to provide energy absorption; body-to-body impacts are unacceptable.

2. The restraint system and the retention of occupants in the seat. Addressing this concern may necessitate providing a means of restraint for the

lower limbs as well as the torso. Failure to limit the forward (in the airplane's coordinate system) travel of the lower limbs may cause the occupant to come out of the restraint system or produce severe injuries due to the resulting position of the restraint system and/or twisting (torsional load) of the lower lumber spinal column.

3. The load limit in the torso in the lateral direction. Human tolerance for side-facing seats differs from that for forward- or aft-facing seats.

The automotive industry has developed test procedures and occupant injury criteria appropriate for side impact conditions. The criteria includes limiting lateral pelvic accelerations and using the ''Thoracic Trauma Index,'' which is defined in 49 CFR 571.214. Use of the Side Impact Dummy (SID) identified in 49 CFR part 572, subpart F, rather than the Hybrid II dummy identified in 49 CFR part 572, subpart B, is required to evaluate these parameters. The Hybrid II dummy is used in the current § 25.562 test. Testing with a SID is the best means available to assess the injury potential of a sideward impact condition. Such an evaluation is considered necessary to provide an acceptable level of safety for side-facing seats.

The side-facing seat special conditions have been determined to result in a level of safety equivalent to that provided by the injury pass/fail criteria in § 25.562 for forward- or aft-facing seats.

Applicability

As discussed above, these special conditions are applicable to Gulfstream Model G150 airplanes. Should GALP apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Model G150 airplanes. 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 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

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 Gulfstream Model G150 airplanes.

In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of single-occupant side-facing seats on Gulfstream Model G150 airplanes are as follows:

Additional Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of §§ 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are required only for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* The seat must be installed immediately aft of a structure, such as an interior wall or furnishing, that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy-absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* The Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis, based on a previous test or tests of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined in 49 CFR part 572, subpart F, or its equivalent. The TTI must be less than 85, as defined in 49 CFR part 572, subpart F. The TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) part 571.214, section S6.13.5.

(d) *Pelvis:* Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

Additional Test Requirements

The above performance measures must not be exceeded during the following dynamic tests:

(a) Conduct a longitudinal test per § 25.562(b)(2) with a SID, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: The TTI and pelvic acceleration.

(b) Conduct a longitudinal test per § 25.562(b)(2) with the Hybrid II Anthropomorphic Test Dummy (ATD), deformed floor, 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: The HIC, upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Conduct a vertical test per § 25.562(b)(1) with a Hybrid II ATD with existing pass/fail criteria.

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16517 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM324; Special Conditions No. 25–293–SC]

Special Conditions: McDonnell Douglas Model MD–10–10F and MD–10–30F Airplanes; Enhanced Flight Visibility System (EFVS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes. These airplanes, as modified by the Federal Express Corporation, will have an advanced enhanced flight visibility system (EFVS). The EFVS is a novel or unusual design feature which consists of a head up display (HUD) system modified to display forward-looking infrared (FLIR) imagery. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 9, 2005. Comments must be received on or before September 21, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM324, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM324. 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: Dale Dunford, FAA, Transport Standards Staff, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2239; fax (425) 227–1320; e-mail: *dale.dunford@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA has determined that the substance of these special conditions has previously been subject to the public comment process. These particular special conditions were recently issued and only three non-substantive comments were received during the public comment period. 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 rules docket number and be submitted in duplicate to the address specified above. The Administrator will consider all communications received on or before the closing date for comments. 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. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NM324''. The postcard will be date stamped and returned to the commenter.

Background

On May 1, 2004, the Federal Express Corporation applied for a supplemental type certificate for the installation and operation of a head-up display (HUD) and an infrared enhanced flight vision system (EFVS) on McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes. The original type certificate for the MD–10–10F and MD–10–30F airplanes is A22WE, revision 7, dated May 24, 2002.

The McDonnell Douglas Model MD–10–10F and MD–10–30F are transport category cargo-carrying airplanes that operate with a crew of two and carry no passengers. The model MD–10–10F airplane has a wing span of 155 feet, a length of 181 feet, a maximum takeoff gross weight of 440,000 pounds, is powered by three General Electric CF6–6D or CF6–K turbofan engines, and has a maximum range of 5,514 nautical miles. The Model MD–10–30F airplane has a wing span of 165 feet; a length of 182 feet; a maximum takeoff gross weight of 565,000 pounds or 580,000 pounds, depending on the serial number; is powered by three General Electric CF6–50C2 turbofan engines; and has a maximum range of 6,500 nautical miles.

The electronic infrared image displayed between the pilot and the forward windshield represents a novel or unusual design feature in the context of 14 CFR 25.773. Section 25.773 was not written in anticipation of such technology. The electronic image has the potential to enhance the pilot's awareness of the terrain, hazards and airport features. At the same time, the image may partially obscure the pilot's direct outside compartment view. Therefore, the FAA needs adequate safety standards to evaluate the EFVS to determine that the imagery provides the intended visual enhancements without undue interference with the pilot's outside compartment view. The FAA intent is that the pilot will be able to use a combination of the information seen in the image and the natural view of the outside scene seen through the image, as safely and effectively as a pilot compartment view without an EVS image that is compliant with § 25.773.

Although the FAA has determined that the existing regulations are not adequate for certification of EFVSs, it believes that EFVSs could be certified through application of appropriate safety criteria. Therefore, the FAA has determined that special conditions should be issued for certification of EFVS to provide a level of safety equivalent to that provided by the standard in § 25.773.

Note: The term ''enhanced vision system'' (EVS) has been commonly used to refer to a system comprised of a head-up display, imaging sensor(s), and avionics interfaces that displayed the sensor imagery on the HUD and overlaid it with alpha-numeric and symbolic flight information. However, the term has also been commonly used in reference to systems which displayed the sensor imagery, with or without other flight information, on a head down display. To avoid confusion, the FAA created the term ''enhanced flight visibility system'' (EFVS) to refer to certain EVS systems that meet the requirements of the new operational rules—in particular the requirement for a HUD and specified flight information—and can be used to determine ''enhanced flight visibility.'' EFVSs can be considered a subset of systems otherwise labeled EVSs.

On January 9, 2004, the FAA published revisions to operational rules in 14 CFR parts 1, 91, 121, 125, and 135 to allow aircraft to operate below certain altitudes during a straight-in instrument approach while using an EFVS to meet visibility requirements.

Prior to this rule change, the FAA issued Special Conditions No. 25–180–SC, which approved the use of an EVS on Gulfstream Model G–V airplanes. Those special conditions addressed the requirements for the pilot compartment view and limited the scope of the intended functions permissible under the operational rules at the time. The intended function of the EVS imagery was to aid the pilot during the approach and allow the pilot to detect and identify the visual references for the intended runway down to 100 feet above the touchdown zone. However, the EVS imagery alone was not to be used as a means to satisfy visibility requirements below 100 feet.

The recent operational rule change expands the permissible application of certain EVSs that are certified to meet the new EFVS standards. The new rule

will allow the use of EFVSs for operation below the minimum descent altitude (MDA) or decision height (DH) to meet new visibility requirements of § 91.175(l). The purpose of these special conditions is not only to address the issue of the ''pilot compartment view,'' as was done by Special Conditions No. 25–180–SC, but also to define the scope of intended function consistent with § 91.175(l) and (m).

Type Certification Basis

Under the provisions of 14 CFR 21.101, the Federal Express Corporation must show that the McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes, as modified, comply with the regulations in the U.S. type certification basis established for those airplanes. The U.S. type certification basis for the airplanes is established in accordance with §§ 21.21 and 21.17, and the type certification application date. The U.S. type certification basis for these model airplanes is listed in Type Certificate Data Sheet No. A22WE, revision 7, dated May 24, 2005, which covers all variants of the DC–10, MD–10, and MD–11 airplanes.

In addition, the certification basis includes certain special conditions and exemptions that are not relevant to these special conditions. Also, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25 as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes modified by Federal Express because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 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 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.

Novel or Unusual Design Features

The McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes will incorporate an EFVS, which is a novel or unusual design feature. The EFVS is a novel or unusual design feature because it projects a video image derived from a FLIR camera through the HUD. The EFVS image is projected in the center of the ''pilot compartment view,'' which is governed by § 25.773. The image is displayed with HUD symbology and overlays the forward outside view. Therefore, § 25.773 does not contain appropriate safety standards for the EFVS display.

Operationally, during an instrument approach, the EFVS image is intended to enhance the pilot's ability to detect and identify ''visual references for the intended runway'' [see § 91.175(l)(3)] to continue the approach below decision height or minimum descent altitude. Depending on atmospheric conditions and the strength of infrared energy emitted and/or reflected from the scene, the pilot can see these visual references in the image better than he or she can see them through the window without EFVS.

Scene contrast detected by infrared sensors can be much different from that detected by natural pilot vision. On a dark night, thermal differences of objects which are not detectable by the naked eye will be easily detected by many imaging infrared systems. On the other hand, contrasting colors in visual wavelengths may be distinguished by the naked eye but not by an imaging infrared system. Where thermal contrast in the scene is sufficiently detectable, the pilot can recognize shapes and patterns of certain visual references in the infrared image. However, depending on conditions, those shapes and patterns in the infrared image can appear significantly different than they would with normal vision. Considering these factors, the EFVS image needs to be evaluated to determine that it can be accurately interpreted by the pilot.

The image may improve the pilot's ability to detect and identify items of interest. However, the EFVS needs to be evaluated to determine that the imagery allows the pilot to perform the normal duties of the flightcrew and adequately see outside the window through the image, consistent with the safety intent of § 25.773(a)(2).

Compared to a HUD displaying the EFVS image and symbology, a HUD that only displays stroke-written symbols is easier to see through. Stroke symbology illuminates a small fraction of the total display area of the HUD, leaving much of that area free of reflected light that could interfere with the pilot's view out the window through the display. However, unlike stroke symbology, the video image illuminates most of the total display area of the HUD (approximately 30 degrees horizontally and 25 degrees vertically) which is a significant fraction of the pilot compartment view. The pilot cannot see around the larger illuminated portions of the video image, but must see the outside scene through it.

Unlike the pilot's external view, the EFVS image is a monochrome, two-dimensional display. Many, but not all, of the depth cues found in the natural view are also found in the image. The quality of the EFVS image and the level of EFVS infrared sensor performance could depend significantly on conditions of the atmospheric and external light sources. The pilot needs adequate control of sensor gain and image brightness, which can significantly affect image quality and transparency (*i.e.*, the ability see the outside view through the image). Certain system characteristics could create distracting and confusing display artifacts. Finally, because this is a sensor-based system intended to provide a conformal perspective corresponding with the outside scene, the system must be able to ensure accurate alignment.

Therefore, safety standards are needed for each of the following factors:

- An acceptable degree of image transparency;
- Image alignment;
- Lack of significant distortion; and
- The potential for pilot confusion or misleading information.

Section 25.773, Pilot compartment view, specifies that ''Each pilot compartment must be free of glare and reflection that could interfere with the normal duties of the minimum flight crew * * *'' In issuing § 25.773, the FAA did not anticipate the development of EFVSs and does not consider § 25.773 to be adequate to address the specific issues related to such a system. Therefore, the FAA has determined that special conditions are needed to address the specific issues particular to the installation and use of an EFVS.

Discussion

The EFVS is intended to function by presenting an enhanced view during the approach. This enhanced view would help the pilot to see and recognize external visual references, as required by § 91.175(l), and to visually monitor

the integrity of the approach, as described in FAA Order 6750.24D (''Instrument Landing System and Ancillary Electronic Component Configuration and Performance Requirements,'' dated March 1, 2000).

Based on this approved functionality, users would seek to obtain operational approval to conduct approaches—including approaches to Type I runways—in visibility conditions much lower than those for conventional Category I.

The purpose of these special conditions is to ensure that the EFVS to be installed can perform the following functions:

- Present an enhanced view that would aid the pilot during the approach.
- Provide enhanced flight visibility to the pilot that is no less than the visibility prescribed in the standard instrument approach procedure.
- Display an image that the pilot can use to detect and identify the ''visual references for the intended runway'' required by § 91.175(l)(3) to continue the approach with vertical guidance to 100 feet height above the touchdown zone elevation.

Depending on the atmospheric conditions and the particular visual references that happen to be distinctly visible and detectable in the EFVS image, these functions would support its use by the pilot to visually monitor the integrity of the approach path.

Compliance with these special conditions does not affect the applicability of any of the requirements of the operating regulations (*i.e.*, 14 CFR parts 91, 121, and 135). Furthermore, use of the EFVS does not change the approach minima prescribed in the standard instrument approach procedure being used; published minima still apply.

The FAA certification of this EFVS is limited as follows:

- The infrared-based EFVS image will not be certified as a means to satisfy the requirements for descent below 100 feet height above touchdown (HAT).
- The EFVS may be used as a supplemental device to enhance the pilot's situational awareness during any phase of flight or operation in which its safe use has been established.

An EFVS image may provide an enhanced image of the scene that may compensate for any reduction in the clear outside view of the visual field framed by the HUD combiner. The pilot must be able to use this combination of information seen in the image and the natural view of the outside scene seen through the image as safely and effectively as the pilot would use a pilot compartment view without an EVS image that is compliant with § 25.773. This is the fundamental objective of the special conditions.

The FAA will also apply additional certification criteria, not as special conditions, for compliance with related regulatory requirements, such as §§ 25.1301 and 25.1309. These additional criteria address certain image characteristics, installation, demonstration, and system safety.

Image characteristics criteria include the following:

- Resolution,
- Luminance,
- Luminance uniformity,
- Low level luminance,
- Contrast variation,
- Display quality,
- Display dynamics (*e.g.*, jitter, flicker, update rate, and lag), and
- Brightness controls.

Installation criteria address visibility and access to EFVS controls and integration of EFVS in the cockpit.

The EFVS demonstration criteria address the flight and environmental conditions that need to be covered.

The FAA also intends to apply certification criteria relevant to high intensity radiated fields (HIRF) and lightning protection.

Applicability

As discussed above, these special conditions are applicable to McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes. Should the Federal Express Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A22WE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes modified by the Federal Express Corporation. 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, 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 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

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 McDonnell Douglas Model MD–10–10F and MD–10–30F airplanes modified by the Federal Express Corporation.

1. The EFVS imagery on the HUD must not degrade the safety of flight or interfere with the effective use of outside visual references for required pilot tasks during any phase of flight in which it is to be used.

2. To avoid unacceptable interference with the safe and effective use of the pilot compartment view, the EFVS device must meet the following requirements:

a. The EFVS design must minimize unacceptable display characteristics or artifacts (*e.g.* noise, ''burlap'' overlay, running water droplets) that obscure the desired image of the scene, impair the pilot's ability to detect and identify visual references, mask flight hazards, distract the pilot, or otherwise degrade task performance or safety.

b. Control of EFVS display brightness must be sufficiently effective in dynamically changing background (ambient) lighting conditions to prevent full or partial blooming of the display that would distract the pilot, impair the pilot's ability to detect and identify visual references, mask flight hazards, or otherwise degrade task performance or safety. If automatic control for image brightness is not provided, it must be shown that a single manual setting is satisfactory for the range of lighting conditions encountered during a time-critical, high workload phase of flight (*e.g.*, low visibility instrument approach).

c. A readily accessible control must be provided that permits the pilot to immediately deactivate and reactivate display of the EFVS image on demand.

d. The EFVS image on the HUD must not impair the pilot's use of guidance

information or degrade the presentation and pilot awareness of essential flight information displayed on the HUD, such as alerts, airspeed, attitude, altitude and direction, approach guidance, windshear guidance, TCAS resolution advisories, or unusual attitude recovery cues.

e. The EFVS image and the HUD symbols—which are spatially referenced to the pitch scale, outside view and image—must be scaled and aligned (*i.e.*, conformal) to the external scene. In addition, the EFVS image and the HUD symbols—when considered singly or in combination—must not be misleading, cause pilot confusion, or increase workload. There may be airplane attitudes or cross-wind conditions which cause certain symbols (*e.g.*, the zero-pitch line or flight path vector) to reach field of view limits, such that they cannot be positioned conformally with the image and external scene. In such cases, these symbols may be displayed but with an altered appearance which makes the pilot aware that they are no longer displayed conformally (for example, ''ghosting'').

f. A HUD system used to display EFVS images must, if previously certified, continue to meet all of the requirements of the original approval.

3. The safety and performance of the pilot tasks associated with the use of the pilot compartment view must not be degraded by the display of the EFVS image. These tasks include the following:

a. Detection, accurate identification and maneuvering, as necessary, to avoid traffic, terrain, obstacles, and other hazards of flight.

b. Accurate identification and utilization of visual references required for every task relevant to the phase of flight.

4. Compliance with these special conditions will enable the EFVS to be used during instrument approaches in accordance with § 91.175(l) such that it may be found acceptable for the following intended functions:

a. Presenting an image that would aid the pilot during a straight-in instrument approach.

b. Enabling the pilot to determine that there is sufficient ''enhanced flight visibility,'' as required by § 91.175(l)(2), for descent and operation below minimum descent altitude/decision height (MDA)/(DH).

c. Enabling the pilot to use the EFVS imagery to detect and identify the ''visual references for the intended runway,'' required by § 91.175(l)(3), to continue the approach with vertical guidance to 100 feet height above touchdown zone elevation.

5. Use of EFVS for instrument approach operations must be in accordance with the provisions of § 91.175(l) and (m). Appropriate limitations must be stated in the Operating Limitations section of the airplane flight manual to prohibit the use of the EFVS for functions that have not been found to be acceptable.

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16518 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20662; Directorate Identifier 2004–NM–191–AD; Amendment 39–14225; AD 2005–17–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes; and Model MD–11 and MD–11F Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes. This AD requires a general visual inspection for damage to the Firex discharge pipes and wye assembly of the fire extinguishing system of the number 2 engine; and corrective and other specified actions, as applicable. This AD results from reports of freezing damage to the Firex discharge pipes and wye assembly of the number 2 engine, and one report of a level 1 ENG FIRE AGENT LO alert during flight. We are issuing this AD to prevent accumulation of water in the discharge pipes and possible consequent freezing damage to the discharge pipes and wye assembly, which could lead to failure of the fire extinguishing system during a fire in the number 2 engine.

DATES: Effective September 26, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 26, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may 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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain McDonnell Douglas airplanes. That NPRM was published in the **Federal Register** on March 22, 2005 (70 FR 14432). That NPRM proposed to require a general visual inspection for damage to the Firex discharge pipes and wye assembly of the fire extinguishing system of the number 2 engine; and corrective and other specified actions, as applicable.

Comments

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

Explanation of New Relevant Service Information

Since we issued the NPRM, Boeing has released Boeing Alert Service Bulletin DC10–26A065, Revision 1, dated May 20, 2005; and Boeing Alert Service Bulletin MD11–26A060, Revision 1, dated May 10, 2005. We have reviewed the procedures in the revised service bulletins and determined that they are essentially the

same as those in the original issues of the service bulletins, with no additional work required. The revised service bulletins show an increase in the cost for required parts. However, we have determined that this increase will not have a significant impact on the cost to operators. Therefore, we have revised paragraphs (c) and (f) in the final rule to specify the revised service bulletins as the primary sources of service information; and revised the ''Costs of Compliance'' section in the final rule to reflect the increased parts cost. We have also inserted new paragraph (g) in the final rule to give credit for modifications already accomplished using the original issues of the service bulletins and re-identified paragraph (g) of the NPRM as paragraph (h) in the final rule.

Support for the Proposed AD

One commenter supports the intent of the subject NPRM and the proposed actions of the AD.

Request for Extended Compliance Time

One commenter agrees with the intent of the NPRM but requests that we revise the compliance time from 12 months to 18 months. The commenter states that a compliance time of 12 months will force operators to perform required modifications during line maintenance between heavy maintenance check intervals. The commenter states that performing the modifications during heavy maintenance checks in a hangar environment, instead of during line operations, would reduce the chances of modification errors. The commenter states that it has not had any reports of problems with delivery of the Firex agent when the engine fire extinguishing system was activated and asserts that an additional six months added to the compliance time would have no significant impact on safety.

We agree with this request. We have re-evaluated all available reports and have determined that increasing the compliance time by six months will not have any significant impact on safety. Therefore, we have revised the compliance time to 18 months in the final rule.

Explanation of Editorial Change

We discovered a math error in the ''Costs of Compliance'' section of the NPRM. The total number of U.S.-registered airplanes in the ''Inspection Costs'' table is shown as 343; it should have been 453. Though changing the number of airplanes from 343 to 453 appears to increase costs for operators, we have determined that no additional burden is imposed on operators because 453 is the number of airplanes actually identified by the service information as referenced in the applicability of this AD. We have revised the ''Inspection Costs'' table in the final rule to reflect this correction.

Conclusion

We have carefully reviewed the available data, including the comments that have been 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 not significantly increase the economic burden on any operator and will not increase the scope of the AD.

Costs of Compliance

There are about 530 airplanes of the affected design in the worldwide fleet. The following tables provide the estimated costs for U.S. operators to comply with this AD. The required actions will be performed at an estimated average labor rate of $65 per work hour.

INSPECTION COSTS FOR ALL AIRPLANES

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1	$65	453	$29,445

REPLACEMENT COSTS FOR MODEL MD–11 AND MD–11F AIRPLANES

Action	Work hours	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replace discharge pipe	2	$7,386	$7,516	195	$1,465,620

REPLACEMENT COSTS FOR MODEL DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A AND KDC–10), DC–10–40, DC–10–40F, MD–10–10F, AND MD–10–30F AIRPLANES

Group	Action	Work hours	Parts cost	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
1	Replace discharge pipe	2	$7,386	$7,516	231	$1,763,196
2	Replace discharge pipe	2	9,010	9,140	16	146,240
3	Replace discharge pipe	2	7,386	7,516	11	82,676

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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2005–17–04 McDonnell Douglas: Amendment 39–14225. Docket No. FAA–2005–20662; Directorate Identifier 2004–NM–191–AD.

Effective Date

(a) This AD becomes effective September 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes as identified in Boeing Alert Service Bulletin DC10–26A065, Revision 1, dated May 20, 2005; and Model MD–11 and MD–11F airplanes as identified in Boeing Alert Service Bulletin MD11–26A060, Revision 1, dated May 10, 2005; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of freezing damage to the Firex discharge pipes and wye assembly of the number 2 engine, and one report of a level 1 ENG FIRE AGENT LO alert during flight. We are issuing this AD to prevent accumulation of water in the discharge pipes and possible consequent freezing damage to the discharge pipes and wye assembly, which could lead to failure of the fire extinguishing system during a fire in the number 2 engine.

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.

Inspection and Corrective and Other Specified Actions

(f) Within 18 months after the effective date of this AD, perform a general visual inspection for damage to the Firex discharge pipes and wye assembly of the fire extinguishing system of the number 2 engine, and corrective and other specified actions; by doing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–26A060, Revision 1, dated May 10, 2005 (for Model M–D11 and MD–11F airplanes); or Boeing Alert Service Bulletin DC10–26A065, Revision 1, dated May 20, 2005 (for Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes); as applicable. Do the corrective and other specified actions, as applicable, prior to further flight.

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.''

Actions Accomplished Previously

(g) Actions accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD11–26A060, dated July 20, 2004; or Boeing Alert Service Bulletin DC10–26A065, dated August 19, 2004; as applicable; are acceptable for compliance with the corresponding actions required by this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles 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.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin DC10–26A065, Revision 1, dated May 20, 2005; or Boeing Alert Service Bulletin MD11–26A060, Revision 1, dated May 10, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for copies of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; 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 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 August 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16268 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20350; Directorate Identifier 2004–NM–202–AD; Amendment 39–14223; AD 2005–17–02]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 777–200 and –300 series airplanes. This AD requires inspecting the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies, and

corrective action if necessary. This AD is prompted by reports of six incidents of the wire bundles chafing against the rear spar stiffeners outside the fuel tank. We are issuing this AD to prevent this chafing, which could result in wire damage leading to a short circuit, subsequent ignition of flammable vapors, and possible uncontrollable fire during fueling or flight.

DATES: This AD becomes effective September 26, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of September 26, 2005.

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

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–2005–20350; the directorate identifier for this docket is 2004–NM–202–AD.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 777–200 and –300 series airplanes. That action, published in the **Federal Register** on February 15, 2005 (70 FR 7681), proposed to require inspecting the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies, and corrective action if necessary.

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 for Proposed AD

One commenter, the airplane manufacturer, concurs with the content of the proposed AD. Another commenter states that it has done the inspection specified in the service information referenced in the proposed AD on all of its Model 777–200 series airplanes.

Request for Clarification of Inconsistencies in Referenced Service Information

One commenter concurs with the intent of the proposed AD, but points out some inconsistencies found in the Accomplishment Instructions of the referenced service bulletin. The commenter states that the service bulletin specifies leaving the wire bundle intact, according to the original factory installation, if the inspection does not reveal any wire chafing; however, the service bulletin also specifies modifying the wire bundle routing by installing additional new hardware, such as spacers, if any chafing is found.

The commenter also states that the intent of the proposed AD is to make sure that there is no wire chafing against the structure. The commenter believes that there will potentially be two different aircraft configurations if the modification is required. The commenter states that the configuration with no spacers may cause the wire bundle to rub against the structure in the future. The commenter adds that, without spacers installed, there is no way to positively prove in the future that the proposed AD was complied with in the past. The commenter prefers to modify the wire bundle routing (adding new spacers) even if there is currently no chafing found, in order to keep common configuration within the fleet and prevent potential problems in the future.

We infer that the commenter is asking for clarification about its perceived inconsistencies in the referenced service bulletin. We agree. The service bulletin describes procedures for inspecting the wire bundles in the wing rear spar for three discrepancies (i.e., wire chafing, wire damage, and any missing spacer at each of the five clamping points). The commenter believes there are only two discrepancies (i.e., wire chafing and wire damage). As a result, the commenter's statement that the wire bundle is left intact if the inspection does not reveal any wire chafing is incorrect. There are two conditions that need to be met for the wire bundle to be ''left intact.'' The service bulletin specifies ''if no wire bundle damage or chafing is found'' and ''if the wire bundle routing is in compliance, no more action is required.'' Wire bundle routing compliance is defined in the service bulletin as ''at least one spacer is found installed at each of the five clamping points.'' In addition, the service bulletin specifies ''if no chafing or damage is found'' and ''if the wire bundle routing is not in compliance, make a modification to the wire bundle routing.'' The modification involves installing a spacer, screw, clip nut, and clamp, as applicable, at any clamping point with no spacer. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition of this AD (*i.e.,* wire chafing and damage).

In addition, we do not agree with the commenter's statement there is no way to positively prove in the future that the AD was complied with in the past. Compliance with an AD is documented in the permanent records of the affected airplanes and can be audited by a principal maintenance inspector. Therefore, we have made no change to the AD in these regards.

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 as proposed.

Costs of Compliance

There are about 403 airplanes of the affected design in the worldwide fleet. This AD will affect about 129 airplanes of U.S. registry. The inspection will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection for U.S. operators is $8,385, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–02 Boeing: Amendment 39–14223. Docket No. FAA–2005–20350; Directorate Identifier 2004–NM–202–AD.

Effective Date

(a) This AD becomes effective September 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category; as identified in Boeing Special Attention Service Bulletin 777–28–0033, dated August 14, 2003.

Unsafe Condition

(d) This AD was prompted by reports of six incidents of the valve control and indication wire bundles of the fuel system chafing against the rear spar stiffeners outside the fuel tank. We are issuing this AD to prevent this chafing, which could result in wire damage leading to a short circuit, subsequent ignition of flammable vapors, and possible uncontrollable fire during fueling or flight.

Compliance

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

Detailed Inspection/Corrective Action

(f) Within 18 months after the effective date of this AD: Do a detailed inspection of the valve control and indication wire bundles of the fuel system of the wing rear spar for discrepancies (including any applicable corrective action), by doing all the actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0033, dated August 14, 2003. Any applicable corrective action must be done before further flight. Part number (P/N) BACC10GU105P, shown in the part list table of Kit 005W3225 and in the step tables in Figures 3 and 4 of the Accomplishment Instructions of the service bulletin, is not a valid P/N; the correct P/N that must be used is P/N BACC10JU105P.

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

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle 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.

Material Incorporated by Reference

(h) You must use Boeing Special Attention Service Bulletin 777–28–0033, dated August 14, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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 August 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16265 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20353; Directorate Identifier 2004–NM–255–AD; Amendment 39–14224; AD 2005–17–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires installing additional shielding of the hydraulic lines in the wing box area. This AD results from the determination that the additional hydraulic line shields will protect the lines from possible impact by tire debris if the tire tread fails. We are issuing this AD to prevent damage to the hydraulic lines and subsequent leakage from the two hydraulic systems, which could result in loss of braking capability on the affected side of the airplane, asymmetrical braking, and reduced directional control—particularly during a rejected takeoff.

DATES: Effective September 26, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 26, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

For the service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

FOR FURTHER INFORMATION CONTACT: Daniel Parillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft

Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may 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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7674). That NPRM proposed to require installing additional shielding of the hydraulic lines in the wing box area.

Comments

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

Change to the NPRM

Since the NPRM was issued, Bombardier has revised Service Bulletin 601R–57–021. Revision 'D,' dated July 11, 2005, adds a procedure to cut the shield, changes the illustration, and incorporates minor editorial changes. The technical content remains otherwise unchanged from that in Revision 'C.' We have revised paragraphs (f) and (g) in this final rule to indicate that accomplishment of the actions specified in revision 'B,' 'C,' or 'D' of the service bulletin is acceptable for compliance with the requirements of this AD.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Shield installation	16	$65	$0	$1,040	91	$94,640

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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2005–17–03 Bombardier, Inc. (Formerly Canadair): Amendment 39–14224. Docket No. FAA–2005–20353; Directorate Identifier 2004–NM–255–AD.

Effective Date

(a) This AD becomes effective September 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7067 inclusive, 7069 through 7165 inclusive, 7167 through 7169 inclusive, and 7171 through 7188 inclusive.

Unsafe Condition

(d) This AD was prompted by the determination that additional shielding of the hydraulic lines in the wing box area will protect the lines from possible impact by tire debris if the tire tread fails. We are issuing this AD to prevent damage to the hydraulic lines and subsequent leakage from the two hydraulic systems, which could result in loss of braking capability on the affected side of the airplane, asymmetrical braking, and

reduced directional control—particularly during a rejected takeoff.

Compliance

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

Installation of Hydraulic Line Shields

(f) Within 24 months after the effective date of this AD, install additional shielding of the hydraulic lines in the wing box area, by doing all the actions specified in the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–021, Revision D, dated July 11, 2005.

(g) Installations accomplished before the effective date of this AD according to Bombardier Service Bulletin 601R–57–021, Revision ''B,'' dated July 18, 2001; or Revision ''C,'' dated February 23, 2004; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h) 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

(i) Canadian airworthiness directive CF–2004–20, dated October 5, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 601R–57–021, Revision D, dated July 11, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada, 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., Room PL–401, Nassif Building, Washington, DC; 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 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 August 10, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16264 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20730; Directorate Identifier 2004–NM–68–AD; Amendment 39–14172; AD 2005–13–35]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 Series 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 all Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes. That AD currently requires installation of a placard on the instrument panel of the cockpit to advise the flightcrew that positioning of the power levers below the flight idle stop during flight is prohibited. Additionally, the existing AD requires eventual installation of an FAA-approved system that would prevent such positioning of the power levers during flight. Installation of that system terminates the requirement for installation of a placard. This new AD requires operators who have incorporated a certain Bombardier service bulletin to perform repetitive operational checks of the beta lockout system and to revise the Airworthiness Limitations document. This AD is prompted by in-service issues reported by operators who incorporated Bombardier Service Bulletin 8–76–24 as an alternative method of compliance to the existing AD. We are issuing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective September 26, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of September 26, 2005.

ADDRESSES: For service information identified in this AD, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada.

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–2005–20730; the directorate identifier for this docket is 2004–NM–68–AD.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, Federal Aviation Administration, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7304; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2000–02–13, amendment 39–11531 (65 FR 4095, January 26, 2000). The existing AD applies to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. The proposed AD was published in the **Federal Register** on March 30, 2005 (70 FR 16164), to continue to require installation of a placard on the instrument panel of the cockpit and eventual installation of an FAA-approved system to prevent positioning of the power levers below the flight idle stop. The proposed AD would also require operators who have incorporated a certain Bombardier service bulletin to perform repetitive operational checks of the beta lockout system and to revise the Airworthiness Limitations document.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic

burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 185 Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes of U.S. registry.

The installation of a placard that is required by AD 2000–02–13, and retained in this AD, requires about 1 work hour per airplane, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the cost impact of the placard installation on U.S. operators is estimated to be $12,025, or $65 per airplane.

The installation of the preventative system that is required by AD 2000–02–13, and retained in this AD, requires about 123 work hours per airplane, at an average labor rate of $65 per work hour. We estimate that required parts will cost approximately $12,000 per airplane. Based on these figures, the cost impact of the installation of the preventative system on U.S. operators is estimated to be $3,699,075, or $19,995 per airplane.

The operational check of the beta lockout system will take about 1 work hour per airplane, per check cycle, at an average labor rate of $65 per work hour. No parts are required. Based on these figures, the estimated cost of the new operational check specified in this AD for U.S. operators is $12,025, or $65 per airplane, per check cycle.

The revision of the Airworthiness Limitations document would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the revision specified in the AD for U.S. operators is $12,025, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–11531 (65 FR 4095, January 26, 2000) and by adding the following new airworthiness directive (AD):

2005–13–35 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14172. Docket No. FAA–2005–20730; Directorate Identifier 2004–NM–68–AD.

Effective Date

(a) This AD becomes effective September 26, 2005.

Affected ADs

(b) This AD supersedes AD 2000–02–13, amendment 39–11531.

Applicability

(c) This AD applies to all Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revision. In this situation, to comply with 14 CFR 91.403 (c), the operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD was prompted by in-service issues reported by operators who incorporated a certain Bombardier service bulletin as an alternative method of compliance to AD 2000–02–13. We are issuing this AD to prevent the inadvertent activation of ground beta mode during flight, which could lead to engine overspeed, engine damage or failure, and consequent 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 2000–02–13

Installation of Placard

(f) Within 30 days after March 1, 2000 (the effective date of AD 2000–02–13), install a placard in a prominent location on the instrument panel of the cockpit that states:

''Positioning of the power levers below the flight idle stop during flight is prohibited. Such positioning may lead to loss of airplane control, or may result in an engine overspeed condition and consequent loss of engine power.''

Installation of System Preventing Excessive Lowering of Power Levers in Flight

(g) Within 2 years after March 1, 2000, install a system that would prevent positioning the power levers below the flight idle stop during flight, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Following accomplishment of that installation, the placard required by paragraph (f) of this AD may be removed.

(h) In the event that the system required by paragraph (g) of this AD malfunctions, or if the use of an override (if installed) is necessary, the airplane may be operated for three days to a location where required maintenance/repair can be performed, provided the system required by paragraph (g) of this AD has been properly deactivated and placarded for flightcrew awareness, in accordance with the FAA-approved Master Minimum Equipment List (MMEL).

New Requirements of This AD

Operational Checks of the Beta Lockout System

(i) For airplanes that have been modified in accordance with Bombardier Service Bulletin 8–76–24: Within 50 flight hours after the effective date of this AD, perform an operational check of the beta lockout system in accordance with the applicable de Havilland Dash 8 task card listed in Table 1 of this AD. Thereafter repeat the operational check at intervals specified in the applicable de Havilland temporary revision (TR) listed in Table 2 of this AD.

TABLE 1.—TASK CARDS

DHC–8 model	de Havilland task card	Date
–101, –102, –103, and –106 airplanes	Dash 8 Series 100 Maintenance Task Card 6120/10	November 21, 2003.
–201 and –202 airplanes	Dash 8 Series 200 Maintenance Task Card 6120/10	November 21, 2003.
–301, –311, and –315 airplanes	Dash 8 Series 300 Maintenance Task Card 6120/10	November 21, 2003.

Revision of Airworthiness Limitations (AWL) Section

(j) Within 30 days after the effective date of this AD, revise the AWL section of the applicable Instructions for Continued Airworthiness by incorporating the contents of the applicable de Havilland TR listed in Table 2 of this AD into the AWL section of the applicable Bombardier DHC–8 Maintenance Program Support Manual (PSM).

TABLE 2.—TRS

DHC–8 model	de Havilland TR	Dated	For PSM
–101, –102, –103, and –106 airplanes	AWL–86	March 17, 2003	1–8–7
–201 and –202 airplanes	AWL 2–26	March 17, 2003	1–82–7
–301, –311, and –315 airplanes	AWL 3–93	March 17, 2003	1–83–7

(k) When the information in the applicable de Havilland TR identified in Table 2 of this AD has been included in the general revisions of the applicable PSM identified in Table 2 of this AD, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the AWL section of the Instruction for Continued Airworthiness.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, New York ACO has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCS approved previously in accordance with AD 2000–02–13 are acceptable for the corresponding requirements of this AD.

Materials Incorporated by Reference

(m) You must use the documents listed in Table 3 of this AD 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 these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. 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.*

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

de Havilland service information	Dated	To de Havilland program support manual
Dash 8 Series 100 Maintenance Task Card 6120/10	November 21, 2003	1–8–7TC.
Dash 8 Series 200 Maintenance Task Card 6120/10	November 21, 2003	1–82–7TC.
Dash 8 Series 300 Maintenance Task Card 6120/10	November 21, 2003	1–83–7TC.
Temporary Revision AWL–86	March 17, 2003	1–8–7.
Temporary Revision AWL 2–26	March 17, 2003	1–82–7.
Temporary Revision AWL 3–93	March 17, 2003	1–83–7.

Issued in Renton, Washington, on June 21, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–12841 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20968; Directorate Identifier 94–CE–15–AD; Amendment 39–14222; AD 95–19–15 R1]

RIN 2120–AA64

Airworthiness Directives; Tiger Aircraft LLC Models AA–5, AA–5A, AA–5B, and AG–5B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is revising Airworthiness Directive (AD) 95–19–15 for all Tiger Aircraft LLC (Type Certificate A16EA formerly held by American General Aircraft Corporation and Grumman American Aviation Corporation) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. AD 95–19–15 currently requires you to inspect the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon); replace any damaged parts; repair any damaged areas; inspect the wing spar at the center spar clearance gap for excessive clearance; and shim the spar if excessive clearance is found. That AD was written to apply to all serial numbers of all models. A design change was made in this area beginning with serial number 10175 of the Model AG–5B airplanes. Therefore, the action should not apply to Model AG–5B airplanes with a serial number of 10175 or higher. This AD retains all the actions of AD 95–19–15 for all airplanes originally affected, but cuts off the applicability for the Model AG–5B airplanes at serial number 10174. We are issuing this AD to continue to prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage of the wing/fuselage to the point of failure.

DATES: This AD becomes effective on October 3, 2005.

As of October 3, 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 Tiger Aircraft LLC, 226 Pilot Way, Martinsburg, WV 25401.

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–2005–20968; Directorate Identifier 94–CE–15–AD.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–794–5531; facsimile: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received four reports (three in England and one in the United States) of wing attach shoulder bolt failure on Tiger Aircraft LLC (Type Certificate A16EA formerly held by American General Aircraft Corporation (AGAC) and Grumman American Aviation Corporation (GAAC)) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. Investigation reveals that excessive wing to center spar clearance could have contributed to the bolt failures; however, in each of the four instances, the bolts failed before reaching the service life of 7,250 hours time-in-service (TIS). The FAA has determined that, to assure the safety of these airplanes, the established service life of these bolts needed review. Our review of service life on Tiger Aircraft LLC (Type Certificate A16EA formerly held by AGAC and GAAC) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes caused us to issue AD 95–19–15, Amendment 39–9377 (60 FR 48628, September 20, 1995). AD 95–19–15 currently requires the following on Tiger Aircraft LLC (Type Certificate A16EA formerly held by AGAC and GAAC) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes, all serial numbers:

—Inspect the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon), and replace any damaged parts and repairing any damaged areas;

—Inspect the wing spar at the center spar clearance gap for excessive clearance; and

—Shim the spar if excessive clearance is found.

AD 95–19–15 was written to apply to all serial numbers of all models. A design change was made in this area beginning with serial number 10175 of the Model AG–5B airplanes. Therefore, FAA determined that the action should not apply to Model AG–5B airplanes with a serial number of 10175 or higher.

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 Tiger Aircraft LLC (Type Certificate A16EA formerly held by American General Aircraft Corporation and Grumman American Aviation Corporation) Models AA–5, AA–5A, AA–5B, and AG–5B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 19, 2005 (70 FR 28854). The NPRM proposed to retain all the actions of AD 95–19–15 for all airplanes originally affected, but proposed to cut off the applicability for the Model AG–5B airplanes at serial number 10174.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Type Certificate Data Sheet (TCDS) Number (No.) Is Referenced Incorrectly in the NPRM

What is the commenter's concern? A letter from Tiger Aircraft LLC notes that the TCDS No. A16EH in the NPRM is referenced incorrectly. The TCDS should be No. A16EA.

What is FAA's response to the concern? We concur. We will correct all reference in the final rule of the TCDS to No. A16EA.

Comment Issue No. 2: Manufacturer's Contact Information Is Incorrect in the NPRM

What is the commenter's concern? The commenter from Tiger Aircraft LLC requests that FAA change the contact information to that for Tiger Aircraft LLC. American General Aircraft Corporation is out of business.

What is FAA's response to the concern? The FAA concurs. We will change the contact information in the final rule to show Tiger Aircraft LLC.

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 the changes discussed above and minor editorial corrections. We have

determined that these changes and 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 3,700 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 this inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
10 work hours × $65 = $650	Not included ..	$650	3,700 × $650 = $2,405,000

We have no way of determining the number of airplanes that may need this replacement of any damaged bolts or repair as a result of the inspection.

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–2005–20968; Directorate Identifier 94–CE–15–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) 95–19–15, Amendment 39–9377 (60 FR 48628, September 20, 1995), and by adding a new AD to read as follows:

95–19–15 R1 Tiger Aircraft LLC: (Type Certificate A16EA formerly held by American General Aircraft Corporation and Grumman American Aviation Corporation): Amendment 39–14222; Docket No. FAA–2005–20968; Directorate Identifier 94–CE–15–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 3, 2005.

What Other ADs Are Affected By This Action?

(b) This AD revises AD 95–19–15, Amendment 39–9377.

What Airplanes Are Affected by This AD?

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

Model	Serial numbers
AA–5	All Serial Numbers.
AA–5A	All Serial Numbers.
AA–5B	All Serial Numbers.
AG–5B	99998, 10000 through 10174.

What Is the Unsafe Condition Presented in This AD?

(d) AD 95–19–15 currently requires you to inspect the wing attach shoulder bolts for fretting, scoring, wear, or enlarged or elongated mounting holes (known as damage from hereon); replace any damaged parts; repair any damaged areas; inspect the wing spar at the center spar clearance gap for excessive clearance; and shim the spar if excessive clearance is found. That AD was written to apply to all serial numbers of all models. A design change was made in this area beginning with serial number 10175 of the Model AG–5B airplanes. Therefore, the action should not apply to Model AG–5B airplanes with a serial number of 10175 or higher. This AD retains all the actions of AD 95–19–15 for all airplanes originally affected, but cuts off the applicability for the Model AG–5B airplanes at serial number 10174. We are issuing this AD to continue to prevent wing attach shoulder bolt failure, which, if not detected and corrected, could lead to structural damage of the wing/fuselage to the point of failure.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect any inboard wing attach shoulder bolt for: (i) Fretting, scoring, or wear (removal of the cad plating) to the shoulder of the bolt (ii) A smooth machined area between the threads and the shoulder bevel of the shoulder bolt profile	Within the next 100 hours aircraft time-in-service (TIS) after November 17, 1995 (the effective date of AD 95–19–15, unless already done	Follow American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005.
(2) Replace any inboard wing attach shoulder bolt with wear (removal of the cad plating from the shoulder of the bolt) or if the threads contact the shoulder of the bolt found during the inspections required in paragraph (e)(1) of this AD	Before further flight after the inspection required by paragraph (e)(1) of this AD	Follow American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005.
(3) Inspect the mounting holes in the wing spar and the center section spar for enlargement or elongation that exceeds the specified dimension	Within the next 100 hours aircraft time-in-service (TIS) after November 17, 1995 (the effective date of AD 95–19–15), unless already done	Follow American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005.
(4) Ream and bush any mounting hole that exceeds the specified dimension found during the inspection required by paragraph (e)(3) of this AD	Before further flight after the inspection required by paragraph (e)(3) of this AD	Follow American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005
(5) Inspect the wing spar at the center spar clearance gap for excessive clearance, and shim the spar if excessive clearance is found	Before further flight after the inspections required by paragraphs (e)(1) and (e)(3) of this AD	Follow American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005.
(6) Do not install any wing attach shoulder bolt that has wear resulting in removal of the cad plating from the shoulder of the bolt or if the threads contact the shoulder bevel of the shoulder bolt profile	As of October 3, 2005 (the effective date of this AD)	Not Applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, New York Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Richard Beckwith, Aerospace Engineer, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–794–5531; facsimile: 516–794–5531.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in American General Aircraft Corporation Service Bulletin No. SB–185–A, Revision A, dated January 10, 2005. 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 Tiger Aircraft LLC, 226 Pilot Way, Martinsburg, WV 25401. 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–2005–20968; Directorate Identifier 94–CE–15–AD.

Issued in Kansas City, Missouri, on August 11, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16260 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21608; Airspace Docket No. 05–ACE–18]

Modification of Class E Airspace; McCook, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at McCook, NE.

DATES: Effective 0901 UTC, October 27, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 28, 2005 (70 FR 37029). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 27, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–16519 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21707; Airspace Docket No. 05–ACE–22]

Modification of Class E Airspace; Lincoln, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Friday, July 29, 2005 (70 FR 43741) (FR Doc. 05–21707). It removes the reference to Class C Airspace at Lincoln, NE.

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register document 05–21707, published on Friday, July 29, 2005 (70 FR 43741), corrected the airport name and removed references to ''effective dates and times established in advance by a Notice to Airmen'' from the legal descriptions for Class C and Class E airspace at Lincoln, NE. However, changes to the Class C airspace were incorrectly included in the direct final rule; request for comments.

■ Accordingly, pursuant to the authority delegated to me, the legal description of the Class E airspace area at Lincoln, NE, as published in the **Federal Register** on Friday, October 29, 2005 (70 FR 43741) (FR Doc. 05–21707), is corrected as follows:

■ On page 43741, Column 2, Docket Title, delete the words ''Class C and''. On page 43741, Column 3, under **SUMMARY**, delete the words ''Class C and''. On page 43741 Column 3, under **SUPPLEMENTARY INFORMATION**, delete the words ''Class C airspace''. On page 43742, Column 2, under Adoption of the Amendment, delete the legal description of Class C airspace.

Issued in Kansas City, MO on August 2, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–16520 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 050520137–5220–02; I.D. 050905F]

RIN 0648–AT10

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework Adjustment 17

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework 17 to the Atlantic Sea Scallop Fishery Management Plan (Framework 17), which was developed and submitted by the New England Fishery Management Council (Council) and approved by NMFS. Framework 17 requires that vessels issued a general category scallop permit and that intend to land over 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops, install and operate vessel monitoring systems (VMS). Framework 17 also allows general category scallop vessels with VMS units to turn off (power-down) their VMS units after they have offloaded scallops and while they are tied to a fixed dock or mooring. Finally, Framework 17 revises the broken trip adjustment provision for limited access scallop vessels fishing in the Sea Scallop Area Access Program. The intent of this action is to provide more complete monitoring of the general category scallop fleet, to reduce VMS operating costs, and to eliminate a provision that may have a negative influence on vessel operator decisions at sea and facilitate safety.

DATES: All provisions in this final rule are effective October 21, 2005, except 50 CFR 648.60(c)(5), which is effective August 22, 2005.

ADDRESSES: Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to Patricia A. Kurkul, Regional Administrator (RA), NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930; and to the Office of Management and Budget (OMB), by e-mail at *David__Rostker@omb.eop.gov* or fax to (202) 395–7285.

Copies of Framework 17, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org*.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, (978) 281–9288; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

Framework 17 was adopted by the Council on February 1, 2005, and was submitted to NMFS by the Council on March 11, 2005, with a supplement submitted on April 4, 2005. A proposed rule for Framework 17 was published in the **Federal Register** on June 2, 2005 (70 FR 32282), with a comment period ending on June 17, 2005. The issues that led to the development of Framework 17 are discussed in detail in the preamble of the proposed rule, and are summarized briefly in this final rule. Framework 17 was developed by the Council to address concerns resulting from reports that vessels issued Atlantic scallop open access general category permits were making undocumented scallop landings and violating the 400–lb (181.44–kg)/50–bu (17.62–hL) possession limit restriction. In addition, the Council made a modification to the procedure that authorizes limited access scallop vessels to terminate Area Access trips prior to fully harvesting the allowed amount of scallops (the broken trip provision).

Framework 17 requires all general category vessels that land, or intend to land, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) unshucked scallops, to install and operate a VMS onboard the vessel. The use of VMS is expected to assist with monitoring of general category vessel activity and facilitate the enforcement of the possession limit regulations. Because of

the cost of installing and operating VMS, the requirement may also help distinguish the active fleet of general category vessels that target scallops from all of the currently permitted vessels, which number over 2,500. VMS will provide better data for fishery management, particularly to specifically identify areas that are more frequently targeted by small vessels fishing outside of the typical scallop fishing areas (e.g., inshore areas of the Gulf of Maine). Transmission of location information through VMS could also assist U.S. Coast Guard search and rescue operations by automatically tracking vessel position.

In order to administer and effectively enforce the new VMS requirement for general category vessels, this final rule establishes a new general category scallop permit designation, under NMFS's Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), section 305(d) authority. Framework 17 requires vessel owners requesting general category scallop permits to determine whether they will fish under the non-VMS general category vessel permit, which authorizes possession of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of unshucked scallops, or under the VMS general category vessel permit, which authorizes the possession of up to 400 lb (181.44 kg) of shucked or 50 bu (17.62 hL) of unshucked scallops. Owners who apply for the VMS general category vessel permit must submit a copy of the vendor installation receipt from a NMFS-approved VMS vendor with their permit application. Vessel owners who have not submitted proof of VMS installation, or who have not submitted a completed application for a VMS general category vessel permit by the effective date of this action will be issued a non-VMS general category vessel permit at that time. Vessel owners may change from one general scallop permit category to another within 45 days of the issuance of the new general category vessel permit.

This final rule also implements a VMS power-down provision to accommodate vessels that do not have continuous power sources at their docks or moorings. Many vessels in the general category fleet are moored or docked in locations that have limited electrical power. The power-down provision was established to address this issue, and it allows vessel operators to turn off their VMS units and notify NMFS once the vessel is in port, has offloaded its catch, and is tied to a permanent dock or mooring. Vessel operators must turn on their VMS units and log into the system before leaving the fixed dock or mooring for any purpose.

This final rule also removes the automatic days-at-sea (DAS) charge and possession limit reduction under the current regulatory provision for limited access scallop vessels that terminate scallop trips in the Area Access Program (the broken trip provision). Under the previous measure, such vessels could resume trips, but the possession limit for the compensation trip was reduced to discourage unnecessary broken trips. This final rule modifies the broken trip provision to allow vessels that break a scallop trip to fully harvest the remainder of their possession limit on a makeup trip. The measure is intended to provide added flexibility for vessel operators in determining if a trip should be terminated prior to catching the full possession limit. Some vessel owners and operators were concerned that the reduced flexibility of the prior measure compromised safety; this final rule should alleviate that concern. The new measure retroactively applies to all broken trips that began on or after March 1, 2005. NMFS will automatically restore all scallop poundage deducted under the prior regulations, and send notification to vessel owners authorizing the harvest of the restored poundage on a subsequent trip. Vessel owners may not harvest this restored poundage until they receive notification from NMFS. This restored poundage can be used on any authorized compensation trip into a specified Access Area, and may be combined with other compensation trips for that specific Access Area, as long as the overall possession limit is not exceeded. Restored poundage can be harvested at any time during the remainder of the fishing year that ends February 28, 2006, provided there are no seasonal restrictions pertaining to the specific Access Area.

Comments and Responses

NMFS received nine comment letters on the proposed rule for Framework 17 (70 FR 32282). Upon review, one comment was found to have no relation to the proposed measures and was not considered during the review of this action. The remaining eight commenters made comments specific to this action. Comments were submitted by the Maine Department of Marine Resources (MEDMR), Stonington Fisheries Alliance (SFA), Associated Fisheries of Maine (AFM), Fisheries Survival Fund (FSF), and five individuals. NMFS has considered all of the comments on the proposed measures, and has approved all of the measures in Framework 17. Responses to specific comments follow:

Comment 1: FSF and an individual support the VMS measures because in their view VMS will result in improved information about the performance of the general category fishery, and will improve the enforceability of the regulations for that sector of the fishery.

Response: NMFS agrees that the VMS will provide better information about vessel activities in this sector of the scallop fishery. Improved information about the fishery will improve management in several ways, including enforcement of the regulations. NMFS notes, however, that representatives of NOAA's Office of Law Enforcement (OLE) expressed concern at the Council meeting in February 2005 that exempting some general category vessels from the VMS requirement would complicate enforcement because it provides an opportunity for general category vessels to fish for and land scallops without using VMS. Despite OLE's concern, the Council concluded that it should exempt that portion of the fishery due to concern about the costs of the system purchase, installation and operation for vessels that make very low scallop landings. NMFS has approved the program as proposed by the Council rather than disapproving it completely because, even with the exemption, the provision improves enforceability of the general category fleet and addresses the need for better data concerning the fishing activity of the active vessels in the general category sector. If there are problems in effectively enforcing this rule, NMFS will urge the Council to modify this provision in a future action.

Comment 2: For several reasons, MEDMR, SFA, AFM, and four individuals oppose the imposition of the VMS requirement as proposed in Framework 17. Most of the specific information in their comments pertains to the fishery in Maine, which they state is composed of vessels that participate in several fisheries over the course of the year, and fish for scallops on a limited scale, usually inshore and usually during December-April. Additional specific points made by these commenters are outlined below, but they all express the same general concern that it is inappropriate to impose the VMS requirement and associated costs on Maine vessel owners given the relatively limited extent of their participation in the scallop fishery. MEDMR specifically notes concern that Framework 17 will require over 2,500 general category vessels to acquire a VMS system to monitor the actions of a few is excessive, especially when the vast majority have not landed significant amounts of scallops in recent years.

Response: The VMS requirement was developed to address enforcement and monitoring issues that are fleet-wide, not confined to specific areas. Landings by general category vessels fleet-wide require closer monitoring, including incidental catches of scallops by vessels fishing in other fisheries (such as the multispecies fishery). It is necessary to be able to monitor effectively vessel activity at all times because scallop catch and landings occur during other fishery operations (such as multispecies fishing). It is not necessary to determine what species is being targeted, but rather, whether excessive scallop landings are occurring regardless of reported fishing activity.

As to the concern noted by MEDMR about imposing the VMS requirement on 2,500 general category vessels, the VMS measure in Framework 17 specifically allows vessels that possess less than 40 lb (18.14 kg) of scallops per trip on all scallop trips to obtain the non-VMS general category vessel permit. The Framework 17 analysis identifies 276 general category vessels that actively fished for scallops and reported landings in 2003. The number of active vessels increased in 2004 and 2005, but most general category scallop vessels remain inactive. Therefore, far fewer than 2,500 vessels will be impacted by the VMS requirement.

Comment 3: One individual suggests that vessels should be exempted from the VMS requirement under the existing state waters exemption provision in the scallop regulations. MEDMR suggests that VMS should not be required for general category scallop vessels north of 42°20′ N. latitude. If this is not possible, then MEDMR suggests that general category scallop vessels should be allowed to declare into the scallop fishery for a minimum of 3 months at a time and be required to operate VMS only when they are declared into the fishery. The SFA also urged NMFS to consider a different approach for the Maine inshore sea scallop fishery.

Response: As noted in Response 2, the VMS requirement was developed to address enforcement and monitoring issues that are fleet-wide, not confined to specific areas. The Council considered alternatives to the measures being enacted in this action, and determined that exemptions from the requirement would weaken enforceability. Further, some Council members questioned the equitability of exemptions specifically proposed for vessels from Maine or vessels fishing in the Gulf of Maine because there was no information presented to support the differential treatment of such vessels. At this stage of the regulatory process, NMFS has only the option of approving or disapproving the proposed measure, and NMFS has approved it.

Comment 4: MEDMR commented that the power-down provision in Framework 17 is ineffective as a cost-saving measure because many vessels will have to have the VMS operating even when targeting other species such as lobster or groundfish. MEDMR believes that this also will create an enforcement nightmare because there will be no indication through the VMS what species is being targeted.

Response: The Council recommended, and NMFS has approved, the measure that allows the VMS to be powered-down only when the vessel is secured to a mooring or dock. The power-down provision is intended to provide relief from the costs of having to operate VMS around the clock for vessels that have limited shore power. The VMS must be operating at all other times to ensure that all trips that land scallops are monitored. Scallop catch and landings often occur on trips that are also targeting other species, such as groundfish.

Comment 5: AFA commented that requiring VMS on general category scallop vessels will not achieve the proposed objectives of documenting landings and preventing unaccounted landings. However, if NMFS decides to approve the measure, AFA favors approval of the power-down measure as well, because is will provide relief for many vessels that do not have the resources to operate a VMS at all times.

Response: Documenting landings is not the sole purpose of the measure. The measure also will better identify vessels that are making landings under the general category permit. VMS will improve efforts to enforce and monitor landings of scallops by general category vessels by providing information about fishing and landing locations. Although VMS does not eliminate the possibility that vessels will make landings in excess of the possession limits, VMS provides an essential enforcement tool to allow agents to check vessels for compliance with those requirements. VMS will also provide valuable data about this sector of the fishery, including fishing effort information that can be used for analytical purposes and in the development of future management measures.

The Council proposed the power-down allowance to reduce impacts on vessels in this sector, and it is being implemented by this final rule. The analyses in Framework 17 project that the initial costs of VMS can be offset if the scallop landings per vessel increase minimally. The measures are expected to better define the active general category fleet and allow the Council to obtain better information to develop management measures in the future. Active vessels should experience benefits from improved management of the scallop resource overall.

Comment 6: MEDMR commented that many boats lack the computer and electrical systems needed to operate VMS; therefore, they will also have to make significant system upgrades at a considerable expense to comply with the requirement.

Response: Framework 17 does not identify the need for ''significant system upgrades'' to accommodate VMS. As discussed in the Framework 17 document, the Skymate VMS unit does require a supporting personal computer, which is accounted for in the cost estimates.

Comment 7: MEDMR commented that there are virtually no landings of scallops from the Gulf of Maine (GOM) in recent years, yet there are hundreds of fishermen currently active in other fisheries who should be able to fish for scallops in the GOM when the stock rebuilds.

Response: Framework 17 does not prevent vessels from continuing to fish for scallops and does not prohibit future fishing opportunities.

Comment 8: MEDMR and two industry representatives commented that the considerable costs of purchasing and operating VMS will cause general category vessel owners in Maine to cancel their general category permits, thus losing their scallop landings and revenue. MEDMR and an industry representative both expressed concern that owners who cancel their permits may then lose their future eligibility for this fishery, because there is a November 1, 2004, control date for the general category scallop fishery. The industry representative contends that if the Council develops a limited access program for the general category fishery, vessel owners who stop participating in the scallop fishery because of the VMS requirement will fail to qualify for the limited access vessel permit.

Response: NMFS understands that participants in the general category scallop fishery are mindful of the fact that the Council may determine in the future to develop a limited access program. The Council's rationale for the requirement is in large part because the Council requires better information about the fishery in order to consider the issue of limited access. At this point, individual vessel owners must make their own decisions about the best course of action to take for the future. The analyses in Framework 17 project

that active general category scallop vessels are likely to increase their scallop landings to offset the costs of VMS purchase, installation, and operation costs, rather than opting into the non-VMS scallop vessel permit category, particularly in light of the November 1, 2004, control date. Previously inactive vessels may also begin to fish for scallops to offset the costs of VMS. However, some vessel owners may decide to reduce their participation to the level allowed under the non-VMS scallop vessel permit.

The Framework 17 analyses do not indicate that the VMS requirement would eliminate any fisheries. Some vessel owners may choose to obtain the non-VMS general category vessel permit and elect to catch a small amount of scallops per trip. Owners of vessels that do not traditionally land more than 40 lb (18.14 kg) will have to consider whether or not purchasing a VMS and landing more scallops would be cost effective for their circumstances.

A review of the analyses in Framework 17 shows that the concerns expressed by the commenters do not appear to be confined to Maine vessels. As is the case for owners in other states, the owners of general category vessels in Maine may choose to constrain their scallop landings to 40 lb (18.14 kg) of scallops and avoid the VMS requirement, or they may opt to install VMS unit and land up to 400 lb (181.44 kg) of scallops.

Comment 9: Two commenters supported the modification of the broken trip provision for the Access Area fishery. One of these commenters stated that vessels with broken trips should be allowed to make up the balance of their trip without penalties.

Response: NMFS agrees and implements the revision to the broken trip provision that eliminates the automatic DAS and possession limit deduction for compensation trips. Further, vessels with broken trips that occurred after March 1, 2005, will receive automatic rebates of scallop pounds that were deducted for the associated compensation trips.

Changes from the Proposed Rule

In § 648.4, paragraphs (a)(2)(ii)(D) and (E) have been added to specify the initial permit application process for general category permit designation.

Pursuant to the Paperwork Reduction Act (PRA), part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. This final rule codifies OMB control numbers for 0648–0529 for §§ 648.4, 648.9, and 648.10.

Under NOAA Administrative Order 205–11, 7/01, dated December 17, 1990, the under Secretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA (AA).

Classification

The RA determined that the framework adjustment implemented by this final rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

For the following reasons, the AA has determined that there is good cause to waive the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(3), for the revision to the broken trip provision under Framework 17. The revision to the broken trip provision specified in § 648.60(c)(5) in this final rule is less restrictive than the current broken trip provision and promotes safety at sea. The revision allows vessels to return to an Access Area to harvest the full remainder of the scallop possession limit. Vessel owners and operators believe that the automatic deduction of DAS and possession limit has resulted in compromised safety at sea because owners and operators claim that vessels may remain at sea in unsafe conditions (e.g., in severe weather, the event of an injury, or mechanical failure) in order to avoid losing a portion of the trip, which could be worth several thousand dollars. Removal of the automatic deduction therefore, may improve safety at sea by eliminating a source of uncertainty in vessel operator decisions when faced with an unforseen event such as bad weather, injury, and mechanical failure. NMFS expects that it will receive several broken trip compensation request forms in the 30 days following publication of the final rule. Although it is uncertain, there is a likelihood that vessels will be forced to break a trip as a result of bad weather in the next 30 days because of the variable effects of weather on different vessels. Weather events have different effects on vessels depending on the size of the vessel and other physical vessel characteristics. Large vessels may be able to remain at sea safely in storms, only coming into port in severe weather, while smaller vessels may be in unsafe conditions in moderately bad weather. Crew injuries and mechanical failures which jeopardize the safety of the crews on vessels may also cause vessels to return to port following publication of the final rule. If faced with the possibility of continuing penalties for breaking trips as a result of bad weather, injury, or mechanical failure, while the final rule is delayed, vessel operators may believe that they should avoid the penalty, thereby compromising safety. Numerous other reasons cause broken trips, including depletion of supplies, ice, and fuel, on vessels, minor mechanical and gear malfunctions, and minor illnesses. While these problems may not specifically jeopardize the safety of the crew, vessel operators may continue to be reluctant to terminate trips even for these reasons if faced with a penalty. If the delayed effectiveness provision is not waived, each request will be subject to the penalty for 30 additional days after the final rule is published. Given that the penalty is administrative, appears to be unnecessary for the management and enforcement of the Access Area program, and may compromise safety, there is good cause to waive the 30-day delay in effectiveness.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared a FRFA in support of Framework 17. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The Final RFA (FRFA) incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 17 (70 FR 32282, June 2, 2005), the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 17 (e.g., the EA and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). Measures in Framework 17 are intended to improve the management of the scallop fishery. A full description of the action and why it is being considered are contained in the preamble to this final rule. The Magnuson-Stevens Act and the Atlantic Sea Scallop Fishery Management Plan, which allow for framework adjustments and amendments to improve the management of the scallop fishery, are the legal basis for this action. This final rule does not duplicate, overlap or

conflict with any relevant Federal rules. A summary of the analysis follows:

Description of Small Entities to Which the Proposed Rule Will Apply

Framework 17 will affect vessels with limited access and general category scallop permits. The vessels in the Atlantic sea scallop fishery are all considered small business entities because all of them grossed less than $3.5 million according to dealer data for the 2001, 2002, and 2003 fishing years. Therefore, there is no disproportionate impact between small and large vessels.

According to the recent permit data, 289 vessels obtained full-time limited access permits in 2003, including 37 small-dredge and 16 scallop trawl permits. In the same year, there were also 34 part-time and 10 occasional limited access permits in the scallop fishery. In addition, 2,554 permits were issued to vessels in the open access general category. Annual revenue from all species, including scallops, averaged about $814,000 per full-time vessel, $405,800 per part-time vessel, and $121,800 per occasional vessel during the 2003 fishing year. The average annual revenue per vessel that participated in the general category scallop fishery was $235,300 in 2003. The average annual revenue per vessel that would be impacted by this action was estimated to be $165,845 for the 2003 fishing year.

Regulatory impacts on profitability were also evaluated and are discussed in the section of this FRFA summary entitled: Description of the Significant Economic Impacts.

A Summary of the Comments and Statement of Changes

The State of Maine, four individuals, and two fishing industry representatives commented that the VMS requirements included in Framework 17 would result in extreme hardship for Maine vessels that have had general category scallop permits and that fish for scallops for part of the year. Comments suggested that the measures may eliminate an inshore Maine scallop fishery and most of the comments opposed to Framework 17 stated that Maine vessels would give up their scallop permit rather than incur the expense of the VMS. These comments are provided in detail in the ''Comments and Responses'' portion of this final rule.

NMFS considered these comments and reviewed the analysis in Framework 17. The Framework 17 document and analyses thoroughly evaluate potential economic impacts (see Section 6.2 of the Framework 17 document and EA). The EA concludes that there would not be significant economic impacts as a result of any of the measures under Framework 17 because very few of the vessels with general category scallop permits (276 out of 2,544) have reported landings of scallops greater than 40 lb (18.14 kg) per trip, resulting in few vessel owners actually being subject to the VMS requirement. Most of the general category fleet is expected to be unaffected by the requirement to install and operate VMS. Further, the Framework 17 document provides a thorough analysis of the cost of VMS units and the expected amount of additional fishing that would be necessary to cover the initial and ongoing costs of the units. As discussed below under ''Description of the Significant Economic Impacts'' the number of trips that it would take to cover the cost of VMS the first year would be about 5 to 7 trips landing 400 lb (181.44 kg) each. Additional trips would begin to generate profits. Operating costs for subsequent years would require minimal additional effort (e.g., one additional 400–lb (181.44–kg) trip). Finally, the economic and social impacts analysis thoroughly evaluated state-by-state participation in the general category fishery. The analysis does not indicate that impacts would be particularly severe in Maine. In particular, Tables 29 through 31 demonstrate that landings of scallops in Maine are relatively low compared to other states. Therefore, NMFS expects that while some vessel owners in Maine may increase effort in order to pay for VMS units, others would continue to land less than 40 lb (18.14 kg) per trip or would not fish for scallops at all, and would elect not to purchase and install VMS units.

Description of the Significant Economic Impacts

1. VMS Requirement for General Category Vessels

This final rule implements the VMS requirement for all general category scallop vessels that possess more than 40 lb (18.14 kg) of scallops at any time. NMFS expects that the exception for vessels that land 40 lb (18.14 kg) of scallops or less will limit the number of vessels required to comply with the new VMS requirement to those that are most active. Other vessels would be able to continue fishing without VMS provided they continue to land 40 lb (18.14 kg) of scallops or less per trip. There were 2,554 vessels with general category permits in the 2003 fishing year; 2,278 of these vessels either did not have any scallop landings or landed no more than 40 lb (18.14 kg) of scallops per trip. A total of 276 general category vessels landed over 40 lb (18.14 kg) of scallops per trip during the 2003 fishing year. These 276 vessels accounted for approximately 99.9 percent of the general category scallop landings in 2003, and 53 of these vessels already have VMS units. Therefore, the action is expected to affect the remaining 223 vessels that do not already have VMS. If all 223 vessels choose to install and operate a VMS, the total costs to the industry of installing VMS could range from $795,000 to $1,307,000 during the initial year of implementation. Total costs would be higher if additional vessel owners seek the option of landing more than 40 lb (18.14 kg) of scallops per trip. However, examining the costs to individual vessels and the amount of scallop trips necessary to offset the initial costs demonstrates that it is likely that initial costs could be offset by increased scallop landings.

The cost of VMS for each vessel is considered in the economic impact analysis in the Framework 17 document. Costs include the initial cost of purchasing and installing the VMS units and ongoing costs of service fees. The initial investment costs for VMS, including the installation charge, activation fee, and monthly service, are estimated to be $3,565 for Skymate and $4,735 for Boatracs. After this initial investment, the costs of VMS for vessels will decline substantially, and will consist of annual service charges estimated to be $1,260 for Boatracs and $647 for Skymate. The initial purchase and installation costs for each vessel would be offset by vessels taking an additional 5 to 7 1-day trips landing 400 lb (181.44 kg) of scallops. Continuing costs would be offset with only 1 to 2 additional trips landing 400 lb (181.44 kg) of scallops.

General category vessels that would be impacted by this action are distinguished by their scallop revenue relative to VMS costs. One group consists of 79 to 87 vessels (depending on the VMS unit installed), which could not cover the cost of the VMS units with their landings of scallops if they continue to harvest scallops at their historical level. Scallop landings per trip for this group of vessels were less than 90 lb (40.8 kg), and annual revenue per vessel from scallops averaged about $1,323 to $1,569. Another group consists of 136 to 144 vessels, depending on the VMS unit installed, which historically make scallop landings that generate revenue to equal or exceed the costs of the VMS units. The majority of these vessels targeted scallops and earned, on average,

$50,000 or more in scallop revenue during the 2003 fishing year.

This action would have negative economic impacts on vessels if they choose to install a VMS and do not increase their scallop landings enough to cover the cost of VMS. Without additional landings, the cost of installing and operating VMS will reduce their profits. Some vessels may therefore choose to lower their scallop landings to the incidental amount (40 lb; 18.14 kg) in order to retain their general category permit without having a VMS onboard. Other vessels could increase trips and landings to the level that would cover the cost of VMS. The analysis notes that vessels fishing for scallops for the first time would have to make landings to cover the cost of VMS before generating any profits. To cover the initial purchase and installation costs, each vessel would need to take approximately 5 to 7 one-day trips landing 400 lb (181.44 kg) of scallops. Continuing costs would be offset with only 1 to 2 trips. For vessels that are likely to increase the number of trips to cover the cost of VMS, this represents only a marginal increase in effort. It is unlikely that such vessels would purchase VMS and not increase effort given the recent high scallop catch rates and product value.

There are several mitigating factors that could minimize the negative economic impacts of VMS implementation for the general category vessels that are required to operate a VMS. Framework 17 provides the flexibility to any vessel with a general category permit to retain the permit without having a VMS on board, as long as scallop catch per trip is limited to the incidental amount (40 lb/18.14 kg per trip). Therefore, many vessels that do not land any scallops per trip, or that land only a small amount of scallops per trip can avoid VMS costs without experiencing a significant amount of revenue loss and without giving up their general category permit. For other general category vessels that already earn significant amounts of revenue from scallop trips in excess of the VMS costs, costs can be covered fully or in part by taking additional trips and/or by increasing the scallop catch per trip. Between 2,000 and 2,600 lb (907.2 and 1,179.3 kg) of scallops would be necessary to cover the initial and ongoing operational costs of the VMS, depending on the unit purchased, and assuming that scallops constitute the only source of revenue from those trips. This catch translates into an additional five to seven 1-day trips at landings of 400 lb (181.44 kg) of scallops per trip. Vessels could also offset VMS costs through additional revenue from other species landed. In the long term, there may be indirect benefits from better enforcement and monitoring of general category vessel landings, and as a result of the safety benefits associated with VMS position data in case of an accident.

NMFS considered and rejected four significant alternatives to the action implemented in this final rule. One alternative would have required all vessels with general category permits, 2,554 vessels or more, to have operable VMS units. This alternative was expected to have excessive costs to the fleet overall, equal to approximately $8 to $12 million. It also was expected to negatively impact 2,344 vessels that do not currently have VMS. It would have affected all general category scallop vessels regardless of their level of landings and such action could not be justified given the costs. Three other alternatives were considered that would have required smaller subsets of the general category scallop vessels to have operable VMS units. Rather than exempting vessels possessing 40 lb (18.14 kg) or less, the alternatives would have exempted vessels from the VMS requirement if they possess less than 100 lb (45.36 kg), 200 lb (90.71 kg), or 300 lb (136.08 kg). While these three alternatives would have impacted a smaller subset of vessels, it would have severely compromised enforcement of the general category possession limit by continuing to facilitate vessels making unreported and illegal landings. These alternatives would be inconsistent with the goals of improving enforcement of the general category fleet under Framework 17.

2. VMS Power-down Exemption

This action implements the power-down provision to allow vessels to turn the VMS off while in port and tied to a dock or mooring. This provision is expected to help to reduce costs associated with the VMS requirement by reducing polling costs and eliminating the cost of generating electricity while the vessel is tied to a dock or mooring without continuous power. Alternatives would have required that vessels keep the VMS unit operable at all times, which could have increased costs and would be difficult for vessels without continuous electrical supply to docks or moorings.

3. Modification of Broken Trip Provision

This action modifies the broken trip provision by eliminating the requirement for a reduction in the scallop possession limit when a broken trip occurs. This measure is expected to have positive economic impacts by reducing the losses from broken trips for the limited access scallop vessels that fish under the Area Access Program. This measure will prevent such revenue loss because it allows vessels to fully harvest the uncaught portion of the possession limit on a subsequent trip. Since the 2005 fishing year is not yet complete, the analysis assumes that the number of broken trips would be approximately the same as the 2004 fishing year. It is not possible to predict the amount of broken trips since they result mainly from random and unforseen events such as severe weather, mechanical problems, and injury. Assuming that the number of broken trip applications are approximately the same as they were during 2004 fishing year, approximately $1.6 million in revenue for the scallop fishery could be recovered by eliminating the possession limit reduction. If the number of broken trips increases in the 2005 fishing year, potential lost revenue from the automatic deduction would be even higher without the Framework 17 revision. Adopting the status quo alternative, i.e., maintaining the automatic DAS and possession limit deduction, would result in continued loss of potential revenues from the scallop access areas.

Economic Impacts of Significant and Other Non-selected Alternatives

This action minimizes the costs for the small business entities operating in the general category scallop fishery as compared to the non-selected alternative 1, under which all vessels with general category permits would be required to operate a VMS. This non-selected alternative would expand the VMS requirement to apply to the 2,278 vessels with general category permits that historically catch no more than 40 lb (18.14 kg) of scallops. The VMS unit costs would require these vessels to either increase their scallop harvest to cover the costs of VMS, or cancel their general category permit, thus losing all scallop revenue. Three other alternatives considered by the Council would have required VMS on general category vessels if the vessel's landings were over 100 lb (45.4 kg), 200 lb (90.7 kg), or 300 lb (136.1 kg) for each alternative. These alternatives would require a smaller subset of vessels to operate VMS, and would result in lower overall costs to the general category fleet compared to the proposed action. However, concerns about the enforcement problems associated with exempting a large number of general category vessels resulted in adoption of

the measure being implemented by this action.

The alternative to the power-down exemption would have required VMS operation at all times. It would not minimize economic impacts on small entities compared to the proposed measure. In addition to continuous costs associated with automatic polling of vessel location, requiring vessels to operate VMS units without a power-down provision could present compliance problems for vessels that do not have sufficient power to run the VMS unit while the vessel is tied to a dock or mooring. It may, in turn, be costly for these vessels to devise a way to keep power supply to the VMS units while the vessel is moored.

Similarly, maintaining the automatic DAS and possession limit charge for broken trips could continue to have negative economic impacts on limited access vessels, and would not minimize economic impacts on small entities. As noted above, approximately $1.6 million in revenue for the scallop fishery could be recovered by eliminating the automatic DAS and possession limit charge. If the number of broken trips increases in the 2005 fishing year, the potential for forgone revenues from the automatic DAS and possession limit charge would be even higher.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide has been prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the RA and are also available from NMFS, Northeast Region (see **ADDRESSES**).

This final rule contains new collection-of-information requirements approved by OMB under the PRA. These new requirements apply to general category vessels only (the requirements already exist for and/or do not apply to other scallop vessels). Public reporting burden for these collections of information are estimated to average as follows:

1. Purchase and installation of VMS units, OMB control number 0648–0529 (1 hr per response);

2. Verification of VMS units, OMB control number 0648–0529 (5 min per response);

3. Notification and application for appropriate general category permit designation, OMB control number 0648–0529 (30 min per response);

4. VMS power-down notification, OMB control number 0648–0529 (2 min per response); and

5. VMS re-power and trip notification, OMB control number 0648–0529 (2 min per response).

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (see **ADDRESSES**).

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

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 16, 2005.

John Oliver

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

15 CFR Chapter IX

■ For the reasons stated in the preamble, 15 CFR chapter IX, part 902, and 50 CFR chapter VI, part 648 are amended as follows:

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

■ 1. The authority citation for 15 CFR part 902 continues to read as follows:

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

§ 902.1 [Amended]

■ 2. In § 902.1, amend the table in paragraph (b) under the CFR part ''50 CFR'' by adding the entry ''-0529'' in numerical order to sections ''648.4'', ''648.9'', and ''648.10'' under the OMB control number column.

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for 50 CFR part 648 continues to read as follows:

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

■ 4. In § 648.4, paragraph (a)(2)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(ii) *General scallop permit.* Any vessel of the United States that is not in possession of a limited access scallop permit, and that possesses, or lands per trip, 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, or less, except vessels that fish exclusively in state waters for scallops, must comply with one of the permit requirements described in paragraphs (a)(2)(ii)(A) or (B) of this section, unless otherwise exempted under paragraph (a)(2)(ii)(C) of this section, and must comply with the application procedures specified in paragraphs (a)(2)(ii)(D) and (E) of this section.

(A) *Non-VMS general scallop permit.* To possess or land up to, but not more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) in-shell scallops per trip that are sold or are intended to be sold, a vessel must apply for and be issued a non-VMS general scallop permit. A vessel issued a non-VMS general scallop permit may not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops at any time.

(B) *VMS general scallop permit.* To possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops, up to 400 lb (181.44 kg) of shucked meats, or 50 bu (17.62 hL) of in-shell scallops, a vessel must apply for and be issued a VMS general scallop permit. Issuance of a VMS general scallop permit requires the vessel owner to submit a copy of the vendor installation receipt from a NMFS-

approved VMS vendor as described in § 648.9.

(C) *Vessels without general scallop permits.* No scallop permit is required for a vessel that possess or lands up to 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) per trip, provided such scallops are not, or are not intended to be, sold, traded, or bartered.

(D) *General scallop permit category designation.* The owner of a vessel issued a general scallop permit for the 2005 fishing year is required to complete and submit an application to the Regional Administrator for the appropriate permit designation as specified in paragraphs (a)(2)(ii)(A) and (B) of this section by September 21, 2005. Vessels shall be issued the appropriate permit category by October 21, 2005 based on the application submitted by the vessel owner. Initial general scallop permit category designations are effective October 21, 2005. A vessel owner who fails to submit a copy of the vendor installation receipt from a NMFS-approved VMS vendor as described in 648.9 by October 21, 2005, shall automatically be issued the non-VMS general scallop permit. If no application is received by October 21, 2005 for vessels previously issued a general scallop permit for the 2005 fishing year, such vessels shall be reissued non-VMS general scallop permits. Vessel owners may request a change in permit category for their general category vessel no later than 45 days from October 21, 2005.

(E) *General scallop permit restrictions.* A vessel may be issued a general scallop permit in only one category during a fishing year. The owner of a vessel issued a general scallop permit must elect a permit category upon the vessel's permit application and shall have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. After that date, the vessel must remain in that permit category for the duration of the fishing year.

* * * * *

■ 5. In § 648.9, paragraph (c)(1) introductory text is revised, and paragraphs (c)(1)(iii) and (c)(2)(i)(D) are added to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) Except as provided in paragraph (c)(2) of this section, or unless otherwise required by paragraph (c)(1)(ii) or (iii) of this section, all required VMS units must transmit a signal indicating the vessel's accurate position, as specified under paragraph (c)(1)(i) of this section.

* * * * *

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(C), or a limited access scallop permit.

* * * * *

(2) * * *

(i) * * *

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in § 648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring.

* * * * *

■ 6. In § 648.10, the section heading and paragraph (b)(1)(iv) are revised to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(iv) A scallop vessel issued a general scallop permit that possesses, or lands per trip, more than 40 lb (18.14 kg) shucked or 5 bu (176.2 L) in shell scallops, or when fishing under the Sea Scallop Area Access Program specified under § 648.60 and in the Sea Scallop Access Areas described in § 648.59(b) through (d);

* * * * *

■ 7. In § 648.14, paragraphs (i)(11) and (12) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(i) * * *

(11) Fail to have an approved, operational, and functioning VMS unit that meets the specifications of § 648.9 on board the vessel at all times, unless the vessel is not subject to the VMS requirements specified in § 648.10.

(12) If the vessel is not subject to VMS requirements specified in § 648.10, possess more than 40 lb (18.14 kg) shucked or 5 bu (176.2 L) in-shell scallops at any time.

* * * * *

■ 8. In § 648.52, paragraph (c) is revised to read as follows:

§ 648.52 Possession and landing limits.

* * * * *

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for or landing per trip, or possessing at any time, more than any sea scallop possession and landing limit specified in or specified by the Regional Administrator in accordance with § 648.60(a)(5).

* * * * *

■ 9. In § 648.60, paragraph (c)(5) is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

* * * * *

(c) * * *

(5) The Regional Administrator shall authorize the vessel to take an additional trip and shall specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, in the 2005 fishing year, if a full-time scallop vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216.3 kg) or 18,000 lb (8,164.7 kg) minus 6,500 lb (2,948.4 kg).

(ii) If a vessel is authorized more than one additional trip for compensation into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession limits for the authorized trips may be combined, provided the total possession limit on a combined compensation trip does not exceed the possession limit for a trip as specified in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding compensation trip authorizations of 10,000 lb (4,535.9 kg) and 8,000 lb (3,628.7 kg) may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,164.6 kg).

(iii) A vessel that terminated a 2005 access area trip after March 1, 2005, but before August 22, 2005, shall be issued authorization to harvest the amount of

pounds deducted from the possession limit for the additional trip. The Regional Administrator will issue this authorization automatically, without request from the vessel owner. A rebated possession limit may be combined with other additional trips as described in paragraph (c)(5)(ii) of this section.

* * * * *

[FR Doc. 05–16613 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for veterinary prescription use of flunixin meglumine solution by intravenous injection in lactating dairy cattle for control of fever associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia.

DATES: This rule is effective August 22, 2005.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9808, e-mail: *john.harshman@fda.gov*.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed a supplemental ANADA 200 124 that provides for veterinary prescription use of Flunixin Meglumine Injection intravenously in lactating dairy cattle for control of fever associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia. The supplemental ANADA is approved as of July 18, 2005, and the regulations are amended in 21 CFR 522.970 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subject in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.970 is amended by revising paragraph (e)(2)(iii) to read as follows:

§ 522.970 Flunixin.

* * * * *

(e) * * *

(2) * * *

(iii) *Limitations*. Do not slaughter for food use within 4 days of last treatment. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. For Nos. 000061 and 059130: Do not use in dry dairy cows. Milk that has been taken during treatment and for 36 hours after the last treatment must not be used for food. For Nos. 055529 and 057561: Not for use in lactating or dry dairy cows.

Dated: August 10, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–16499 Filed 8–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9220]

RIN 1545–BE66

Converting an IRA Annuity to a Roth IRA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary Regulations.

SUMMARY: This document contains temporary regulations under section 408A of the Internal Revenue Code (Code). These temporary regulations provide guidance concerning the tax consequences of converting a non-Roth IRA annuity to a Roth IRA. These temporary regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians and issuers of Roth IRAs. The text of these temporary regulations also serves as the text of proposed regulations set forth in a notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 19, 2005.

Applicability Date: These regulations are applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy A. Vohs, 202–622–6060.

SUPPLEMENTARY INFORMATION:

Background

Roth IRAs and Conversions

This document contains temporary regulations that amend the Income Tax Regulations (26 CFR part 1) under section 408A of Code relating to Roth IRAs. Section 408A of the Code, which was added by section 302 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788), establishes the Roth IRA as a type of individual retirement plan, effective for taxable years beginning on or after January 1, 1998.

Under Code section 408A, a Roth IRA is treated like a traditional IRA with several significant exceptions. Like amounts held in traditional IRAs, amounts held in Roth IRAs generally are exempt from Federal income tax under Code section 408(e)(1). Likewise, contributions to traditional IRAs and

Roth IRAs are subject to specific limitations.

The identifying characteristic of Roth IRAs is that all contributions are after-tax contributions, and qualified distributions are tax free. Thus, unlike certain contributions to traditional IRAs, which may be deductible, contributions to Roth IRAs cannot be deducted from gross income. Distributions from a traditional IRA are includible in gross income except to the extent attributable to a return of basis. However, qualified distributions from Roth IRAs are excludible from gross income. Under section 408A(d)(2), a qualified distribution from a Roth IRA is a distribution that is made: (1) At least 5 years after the account owner (or the account owner's spouse) made a Roth IRA contribution, and (2) after age 59½, after death, on account of disability, or for a first-time home purchase.

A taxpayer whose modified adjusted gross income for a year does not exceed $100,000 may convert an amount held in a non-Roth IRA (*i.e.*, a traditional IRA or SIMPLE IRA) to an amount held in a Roth IRA. This conversion requires taking into income the value of the non-Roth IRA being converted (to the extent the conversion is not a conversion of basis in the non-Roth IRA), essentially converting the value into an after-tax rollover contribution to the Roth IRA. A conversion may be accomplished by means of a rollover, trustee-to-trustee transfer, or account redesignation.

Regardless of the means used to convert, any amount converted from a non-Roth IRA to a Roth IRA is treated as distributed from the non-Roth IRA and rolled over to the Roth IRA. The conversion amount is generally includible in gross income for the year of the conversion under section 408(d)(1) and (2). In the case of a conversion involving property, the conversion amount generally is the fair market value of the property on the date of distribution or the date the property is treated as distributed from the traditional IRA.

Final regulations regarding Roth IRAs were published in the **Federal Register** on February 4, 1999 (64 FR 5597). Section 1.408A–4 provides rules relating to converting amounts from a traditional IRA to a Roth IRA. Section 1.408A–4, A–7, which sets forth the tax consequences of converting an amount held in a traditional IRA to a Roth IRA, provides that any amount that is converted to a Roth IRA is includible in gross income as a distribution according to the rules of section 408(d)(1) and (2) for the taxable year in which the amount is distributed or transferred from the traditional IRA.

Under A–1 of § 1.408A–7, any amount converted from a non-Roth IRA to a Roth IRA is treated as a distribution for which a Form 1099–R, ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA, Insurance Contracts,'' must be filed by the trustee maintaining the non-Roth IRA.

Fair Market Value of Annuity Contracts

Before the enactment of section 408A, the need to value an annuity contract as a result of distribution from a qualified plan or IRA rarely arose. The distribution of an annuity contract from a qualified plan or a traditional IRA is generally not a taxable event because, in most cases, the distributed annuity account contract continues to be subject to requirements necessary for tax deferral, *e.g.*, the annuity remains subject to the minimum distribution requirements of section 401(a)(9). In such a case, no amount is includible in income until amounts are actually distributed from the annuity contract. However, in certain situations, the Code provides that the fair market value of an individual retirement annuity is treated as a taxable distribution. For example, under section 408(e), the fair market value of the annuity is included in taxable income if the annuity ceases to be an individual retirement annuity because of violations of requirements set forth under that subsection.

Section 25.2512–6 of the Gift Tax Regulations provides rules regarding the valuation of certain life insurance contracts for gift tax purposes.[1] Under these rules, the value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. In addition, § 25.2512–6 provides that, as the value of an insurance policy through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date. If, however, because of the unusual nature of the contract, such approximation is not reasonably close to the full value, this method may not be used. Thus, this method may not be used to determine the fair market value of an insurance policy where the reserve does not reflect the value of all relevant features of the policy. These gift tax valuation rules also apply for purposes of commercial annuity contracts. See *Examples 1* and *2* of § 25.2512–6. In addition, under § 20.2031–8 of the Estate Tax Regulations, the same rules govern the valuation of such life insurance and commercial annuity contracts for estate tax purposes. See §§ 20.2031–7(b) and 20.2039–1(c).

Under A–12 of § 1.401(a)(9)–6, an employee's entire interest under an annuity contract is the dollar amount credited to the employee or beneficiary under the contract plus the actuarial value of any additional benefits (such as survivor benefits in excess of the account balance) that will be provided under the contract. This rule requiring that the value of additional benefits under an annuity contract be included in the employee's entire interest, for purposes of determining the required minimum distribution under section 401(a)(9), is based on the general requirement that the fair market value of all assets must be reflected in valuing an account balance under a defined contribution plan. However, certain additional benefits may be disregarded for purposes of calculating the required minimum distribution, such as when there is a pro-rata reduction in additional benefits for a withdrawal and a guaranteed return of premiums upon death, to reflect the fact that distributions are being made to satisfy section 401(a)(9).

Rev. Proc. 2005–25 (2005–17 I.R.B. 962), provides safe harbor formulas that, if used to determine the value of a life insurance contract, retirement income contract, endowment contract, or other contract providing life insurance protection that is distributed or otherwise transferred from a qualified plan, will meet the definition of fair market value for purposes of applying the rules of section 402(a) (as well as sections 79, 83, and 402(b)).

Explanation of Provisions

These temporary regulations under section 408A clarify that, when a non-Roth individual retirement annuity is converted to a Roth IRA, the amount that is treated as distributed is the fair market value of the annuity contract on the date the annuity contract is

[1] In Rev. Rul. 59–195 (1959—1 C.B. 18), the IRS ruled that, in situations similar to those in which an employer purchases and pays the premiums on an insurance policy on the life of one of its employees and subsequently sells such policy, on which further premiums must be paid, the value of such policy for computing taxable gain in the year of purchase should be determined under the method of valuation prescribed in § 25.2512–6 of the Gift Tax Regulations.

converted. Similarly, when a non-Roth individual retirement account holds an annuity contract as an account asset and the account is converted to a Roth IRA, the amount that is treated as distributed with respect to the annuity contract is the fair market value of the annuity contract on the date the annuity contract is distributed or treated as distributed from the non-Roth IRA.

Some taxpayers and their advisers assert that the only amount includible in income as a distribution when a non-Roth individual retirement annuity is converted to a Roth IRA is the cash surrender value of the contract, even when the cash surrender value does not accurately reflect the fair market value of the contract. In particular, some advisers market a transaction in which taxpayers are encouraged to invest their non-Roth IRA funds in a single premium annuity contract with significant artificial penalties that apply in the first year (or years) of the contract if the annuity is surrendered, causing the annuity to have a low cash surrender value in the early years of the contract. Under this transaction, shortly after the annuity contract is purchased by the non-Roth IRA, the taxpayer converts the IRA to a Roth IRA. In such a case, the taxpayer asserts that the only amount includible in gross income as a result of the conversion is the low cash surrender value. This assertion is made even though the surrender penalties are unlikely to be paid because the taxpayers do not expect to surrender the contract during the early years. In this case, the taxpayers expect that the ultimate payments under the contract will be qualified distributions from the Roth IRA (*i.e.*, tax-exempt), and thus, they also expect the artificially depressed cash surrender value to be the only amount ever includible in gross income.

In another situation, a taxpayer purchases a non-Roth individual retirement variable annuity with a guaranteed minimum death benefit equal to the highest account value ever attained under the contract, adjusted for withdrawals. If an amount is withdrawn from the contract, the death benefit is reduced dollar for dollar (rather than a pro-rata reduction) by the amount of the withdrawal. Prior to the date of conversion, the annuity has a death benefit far in excess of the account value and the taxpayer withdraws from the IRA annuity all but a minimum account value that will keep the IRA annuity in force. Because the withdrawal reduces the guaranteed minimum death benefit on a dollar-for-dollar basis, the remaining death benefit will be significantly greater than the current account value, and accordingly, the current account value will not reflect the fair market value of the contract. For example, suppose such an individual retirement variable annuity has a guaranteed minimum death benefit of $200,000 with an account value of $100,000. The taxpayer withdraws $99,000 leaving a $1,000 account value and a $101,000 death benefit ($200,000 less $99,000)). The taxpayer then converts the IRA annuity into a Roth IRA and takes the position that the $1,000 account value is the conversion amount even though the account value does not reflect the fair market value of the additional $100,000 that will be paid upon the taxpayer's death. In this case, the taxpayer expects that the entire benefit payment of $101,000 will be a qualified distribution from the Roth IRA (*i.e.*, tax-exempt), and thus, expects that the $1,000 account value on the date of conversion will be the only amount ever includible in gross income.

The IRS and Treasury Department have concluded that cash surrender value is not always an appropriate measure of fair market value with respect to non-Roth IRA annuities that are converted to Roth IRA annuities. Rather than use the cash surrender value as the basis for determining fair market value, these temporary regulations follow the gift tax regulations in providing that the fair market value of an individual retirement annuity is established by the premiums paid for such annuity if the conversion occurs soon after the annuity was purchased.

Under the temporary regulations, if the conversion occurs after the annuity contract has been in force for some time and no further premium payments are to be made, fair market value is determined through the sale by the company of comparable contracts. The temporary regulations further provide that, if the conversion occurs after the annuity contract has been in force for some time and future premium payments are to be made, fair market value is determined through an approximation that is based on the interpolated terminal reserve at the date of the conversion, plus the proportionate part of the gross premium last paid before the date of the conversion which covers the period extending beyond that date. However, if, because of the unusual nature of the contract, this approximation is not reasonably close to the full value, this method may not be used.

These temporary regulations also provide authority for the Commissioner to issue additional guidance regarding the fair market value of an individual retirement annuity, including formulas to be used for determining fair market value. The IRS and Treasury Department expect to issue additional guidance regarding the rules to be used in determining the fair market value of a non-Roth IRA annuity. It is anticipated that such guidance will be similar to the provisions of Rev. Proc. 2005–25 (2005–17 I.R.B. 962, April 25, 2005), except that the adjustment for potential surrender charges, to the extent permitted, will not exceed 9 percent. It is also anticipated that such guidance will provide that in determining fair market value, the value of all additional benefits (such as guaranteed minimum death benefits) under the contract must be taken into account. The IRS and Treasury Department request comments regarding this anticipated guidance. The IRS and Treasury Department also request comments regarding whether the method used to calculate the fair market value of an annuity contract that is converted to a Roth IRA should also apply for purposes of the determining fair market value of an annuity contract under sections 408(e) and 401(a)(9). These comments may be submitted in conjunction with the comments submitted on the proposed regulations discussed below.

Proposed regulations regarding the determination of fair market value of an annuity contract are contained in the Proposed Rules section of the **Federal Register**. The preamble and text of these temporary regulations also serves as the preamble and text of the proposed regulations.

Effective Date

The temporary amendments to § 1.408A–4 of the regulations are applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. No implication is intended concerning whether or not a rule to be adopted in these regulations is applicable law for taxable years ending before that date.

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these temporary regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the notice of proposed rulemaking published in the Proposed Rules section

of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these temporary regulations is Cathy A. Vohs of the Office of the Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

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

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

§ 1.408A–4T also issued under 26 U.S.C. 408A * * *

■ **Par. 2.** Section 1.408A–4 is amended by adding, in numerical order, Q–14 and A–14, to read as follows:

§ 1.408A–4 Converting amounts to Roth IRAs.

* * * * *

Q–14. [Reserved]. For further guidance, see § 1.408A–4T, Q–14.

A–14. [Reserved]. For further guidance, see § 1.408A–4T, A–14.

■ **Par. 3.** Section 1.408A–4T is added to read as follows:

§ 1. 408A–4T Converting amounts to Roth IRAs.

* * * * *

Q–14. What is the amount that is includable in income as a distribution when a conversion involves an annuity contract?

A–14. (a) *In general.* Notwithstanding § 1.408–4(e), when part or all of a traditional IRA that is an individual retirement annuity described in section 408(b) is converted to a Roth IRA, for purposes of determining the amount includible in gross income as a distribution under § 1.408A–4, A–7, the amount that is treated as distributed is the fair market value of the annuity contract on the date the annuity contract is converted. Similarly, when a traditional IRA that is an individual retirement account described in section 408(a) holds an annuity contract as an account asset and the traditional IRA is converted to a Roth IRA, for purposes of determining the amount includible in gross income as a distribution under § 1.408A–4, A–7, the amount that is treated as distributed with respect to the annuity contract is the fair market value of the annuity contract on the date that the annuity contract is distributed or treated as distributed from the traditional IRA.

(b) *Determination of fair market value*—(1) *General rule.* For purposes of this A–14, the fair market value of an individual retirement annuity issued by a company regularly engaged in the selling of contracts of that character generally is established as follows—

(A) If the conversion occurs soon after the contract was sold and there have been no material changes in market conditions, the fair market value of the contract is established through the sale of the particular contract by the company (*i.e.*, the actual premiums paid for such contract);

(B) If the conversion occurs after the contract has been in force for some time and no further premium payments are to be made, the fair market value of the contract is established through the sale by the company of comparable contracts;

(C) If the conversion occurs after the contract has been in force for some time and future premium payments are to be made, the fair market value of the contract is established through an approximation that is based on the interpolated terminal reserve at the date of the conversion, plus the proportionate part of the gross premium last paid before the date of the conversion which covers the period extending beyond that date. However, if, because of the unusual nature of the contract, this approximation is not reasonably close to the full value, this method may not be used. Thus, this method may not be used to determine the fair market value of an annuity contract where the reserve does not reflect the value of all relevant features of the contract.

(2) *Additional guidance.* Additional guidance regarding the fair market value of an individual retirement annuity, including formulas to be used for determining fair market value, may be issued by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (See § 601.601(d)(2)(ii)(b)).

(c) *Effective date.* The provisions of this A–14 are applicable to any conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005.

(d) *Definitions.* The definitions set forth in § 1.408A–8 apply for purposes of this A–14.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary for Tax Policy.

[FR Doc. 05–16403 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

RIN 1219–AB38

Fees for Testing, Evaluation, and Approval of Mining Products; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects a direct final rule published in the **Federal Register** of August 9, 2005, regarding fees for testing, evaluation, and approval of mining products.

DATES: Effective on August 22, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *smith-rebecca@dol.gov,* (202) 693–9440 (telephone), (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION: In rule FR Doc. 05–15495 published on August 9, 2005 (70 FR 46336), make the following corrections:

1. On page 46336, in the first column, under **ADDRESSES**, change the e-mail address from *''comments@msha.gov''* to *''zzmsha-comments@dol.gov''*.

2. On page 46337, in the third column, in the second full paragraph, in the second sentence, change the word ''revised'' to ''existing''.

3. On page 46338, in the first column, in the first full paragraph, in the sixth sentence, change the term ''part 5'' to ''part 15''.

§ 5.30 [Corrected]

■ 4. On page 46342, in the second column, after the rule text of paragraph (d), remove the five asterisks.

§ 22.4 [Corrected]

■ 5. On page 46343, in the first column, in the first sentence of the rule text for § 22.4(a), change the term ''the active investigation of'' to ''an active investigation''.

§ 23.3 [Corrected]

■ 6. On page 46343, in the second column, in the first sentence of the rule text for § 23.3(a), change the term ''the active investigation of'' to ''an active investigation''.

§ 33.3 [Corrected]

■ 7. On page 46343, in the third column, after the rule texts for § 33.3, remove the five asterisks.

Dated: August 16, 2005.

Robert M. Friend,

Acting Deputy Assistant Secretary.

[FR Doc. 05–16560 Filed 8–19–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 05–006]

RIN 1625–AA87

Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the perimeter of the existing security zone that extends approximately 50 yards into the navigable waters of the Oakland Estuary, Alameda, California, around the United States Coast Guard Island Pier to coincide with the perimeter of a floating security barrier. This action is necessary to provide continued security for the military service members on board vessels moored at the pier and the government property associated with these valuable national assets. This security zone prohibits all persons and vessels from entering, transiting through, or anchoring within a portion of the Oakland Estuary surrounding the Coast Guard Island Pier unless authorized by the Captain of the Port (COTP) or his designated representative.

DATES: This rule is effective starting at 12:01 a.m. on September 21, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket are part of docket COTP 05–006 and are available for inspection or copying at the Waterways Branch of the Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ian Callander, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3401.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 29, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA'' in the **Federal Register** (69 FR 4267) proposing to establish a security zone extending approximately 50 yards around the Coast Guard Island Pier in the navigable waters of the Oakland Estuary in Alameda, California. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held. On June 7, 2004, we published a final rule (codified as 33 CFR 165.1190) entitled ''Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA'' in the **Federal Register** (69 FR 31737) that established a security zone extending approximately 50 yards around the Coast Guard Island Pier in the navigable waters of the Oakland Estuary in Alameda, California.

Since that time, the Coast Guard determined that a floating security barrier should also be installed to provide an added level of security for the Coast Guard Cutters that moor at the Coast Guard Island Pier. Because the navigational channel is less than 50 yards from the two ends of the Coast Guard Island Pier, and in order to provide approximately 50 yards of maneuvering space for the cutters along the entire length of the pier, the barrier needed to extend into the navigational channel approximately 10 to 20 yards at each end. Since the previously published security zone did not extend into the navigational channel, we published another NPRM entitled ''Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA'' in the **Federal Register** on May 9, 2005 (70 FR 24344) proposing to revise the perimeter of the existing security zone around the Coast Guard Island pier to mirror the perimeter of the floating security barrier. We received two comments on the proposed rule. No public hearing was requested, and none was held.

Vessels or persons violating this section are subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000) and in rem liability against the offending vessel. Any person who violates this section using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce this security zone and may enlist the aid and cooperation of any Federal, State, county, municipal, or private agency to assist in the enforcement of the regulation.

Background and Purpose

In its effort to thwart potential terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, the Coast Guard is revising the perimeter of the existing security zone around the Coast Guard Island pier to mirror the perimeter of the floating security barrier. The need for the security zone still exists due to heightened security concerns and the catastrophic impact a terrorist attack on a Coast Guard Cutter would have on the crew on board and surrounding government property.

This security zone is needed for national security reasons to protect Coast Guard Cutters, their crews, the public, transiting vessels, and adjacent waterfront facilities from potential

subversive acts, accidents or other events of a similar nature. This rule prohibits the entry of any vessel or person inside the security zone without specific authorization from the Captain of the Port, or his designated representative. Due to heightened security concerns and the catastrophic impact a terrorist attack on one of these vessels would have, having a security zone around the Coast Guard Island Pier remains a prudent and necessary action.

Discussion of Comments and Changes

We received two comments on the proposed rule. No public hearing was requested, and none was held. The first comment we received noted that the two geographical positions provided in the NPRM that were intended to be located on the shore of Coast Guard Island actually plotted slightly offshore from Coast Guard Island. The two positions have been corrected in this final rule. The second comment we received requested that we use yards as the unit of measurement to describe the security zone instead of feet in order to be consistent with other security zones in the San Francisco Bay Area. As a result, we have used yards as the unit of measurement to describe the security zone in this final rule. Because neither of these two changes have a substantive impact on the regulation, we feel that making these changes does not warrant an extension to the public comment period provided by the NPRM.

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).

Although this rule restricts access to the waters encompassed by the security zone, the effects of this rule are not significant for the following reasons: (i) Vessel traffic is able to pass safely around the area, (ii) vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities, (iii) the perimeter of the security zone only extends 10 to 20 yards into the approximately 170-yard wide navigational channel, and (iv) this security zone is only slightly larger than the Coast Guard Island security zone that has been in place since July 7, 2004.

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 will not have a significant economic impact on a substantial number of small entities. The small entities most likely to be affected are tug and barge companies transiting the Oakland Estuary. This regulation will not have a significant economic impact on these small entities for several reasons: (i) Vessel traffic is able to pass safely around the area, (ii) vessels engaged in commercial towing have ample space outside of the security zone to engage in towing activities, (iii) the perimeter of the security zone only extends approximately 10 to 20 yards into the approximately 170-yard wide navigational channel, and (iv) this security zone is only slightly larger than the Coast Guard Island security zone that has been in place since July 7, 2004. Small entities and the maritime public would be advised of this security zone via broadcast notice to mariners, and/or local notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal Regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–800–REG–FAIR (1–888–734–3247).

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 this preamble.

Taking of Private Property

This rule will 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 does 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a security zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' (CED) are 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. Revise § 165.1190 to read as follows:

§ 165.1190 Security Zone; San Francisco Bay, Oakland Estuary, Alameda, CA.

(a) *Location.* The following area is a security zone: All navigable waters of the Oakland Estuary, California, from the surface to the sea floor, approximately 50 yards into the Oakland Estuary surrounding the Coast Guard Island Pier. The perimeter of the security zone follows the same perimeter as the floating security barrier installed around the Coast Guard Island pier. The perimeter of the security barrier is located along the following coordinates: commencing at a point on land approximately 50 yards northwest of the northwestern end of the Coast Guard Island Pier at latitude 37°46′53.60″ N and longitude 122°15′06.10″ W; thence to the edge of the navigable channel at latitude 37°46′51.83″ N and longitude 122°15′07.47″ W; thence to a position approximately 10 yards into the charted navigation channel at latitude 37°46′51.27″ N and longitude 122°15′07.22″ W; thence closely paralleling the edge of the charted navigation channel to latitude 37°46′46.75″ N and longitude 122°15′00.21″ W; thence closely paralleling the edge of the charted navigation channel to a point approximately 20 yards into the charted navigation channel at latitude 37°46′42.36″ N and longitude 122°14′51.55″ W; thence to a point on land approximately 50 yards southeast of the southeastern end of the Coast Guard Island Pier at latitude 37°46′44.80″ N and longitude 122°14′48.80″ W; thence northwest along the shoreline back to the beginning point.

(b) *Regulations.* (1) Under § 165.33, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The Captain of the Port will enforce this security zone and may be assisted in the patrol and enforcement of this security zone by any Federal, State, county, municipal, or private agency.

Dated: August 3, 2005.

W.J. Uberti,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.

[FR Doc. 05–16515 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2004–NC–0005–200513, FRL–7956–8]

Approval and Promulgation of Air Quality Implementation Plans; North Carolina; Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the State of North Carolina, through the Department of Environment and Natural Resources (DENR) on December 21, 2004, for the four Early Action Compact (EAC) areas in North Carolina: the Mountain, Unifour, Triad and Fayetteville areas (the North Carolina EAC Areas). The SIP revisions meet the requirements for the North Carolina EAC Areas to attain and maintain the 8-hour ozone national ambient air quality standard (the 8-hour ozone standard) as described in the EAC Protocol and related regulations. EPA is also now approving the photochemical modeling used by North Carolina to support the attainment and maintenance demonstration of the 8-hour ozone standard in the North Carolina EAC Areas.

In this action, EPA is not finalizing its proposed rulemaking to defer the effective date of the nonattainment designations for EAC areas. In a separate action, published on June 8, 2005, EPA proposed to defer the effective date of the nonattainment deferred designation for EAC areas until December 31, 2006 (69 FR 23858). EPA final action on the deferral is expected to be published before September 30, 2005.

DATES: This rule will be effective September 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Material in EDocket (RME) ID No. R04–OAR–2004–NC–0005. The EAC Protocol can be found in RME ID No. R04–OAR–2004–NC–0005. The Protocol can also be found at *http://www.epa.gov/air/eac/*. 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 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann, 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) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Today's Action
III. Response to Comments
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 26, 2005, EPA proposed approval of North Carolina's December 21, 2004, SIP revisions demonstrating attainment and maintenance of the 8-hour ozone standard, 0.08 parts per million (ppm), in the North Carolina EAC Areas by December 31, 2007.[1] Additional information regarding the specific SIP revisions being approved today is available in the proposed rule (70 FR 30389, May 26, 2005) included in this Docket. The submitted revisions were necessary, pursuant to the April 30, 2004, designations of the North Carolina EAC Areas for the 8-hour ozone standard. The SIP revisions are consistent with the requirements established in the EAC Protocol and related regulations. For further information on the designation process and the North Carolina EAC designations, please see 69 FR 23858 (April 30, 2004).[2] EPA received public comments for thirty days on the SIP revisions being approved today. The comments will be discussed below in Part III., ''Response to Comments.''

Summary of EAC Process

An EAC is an agreement between a state, local governments, and EPA to implement measures not necessarily required by the Clean Air Act (CAA) in order to achieve cleaner air as soon as possible.[3] Communities close to or exceeding the 8-hour ozone standard, that have elected to enter into an EAC, have started reducing air pollution at least two years sooner than required by the CAA. In many cases, these reductions will be achieved by local air pollution control measures not otherwise mandated under the CAA. In accordance with the EAC Protocol, North Carolina submitted an EAC for the Unifour area on December 19, 2002, the Fayetteville area on December 20, 2002, and the Triad and Mountain areas on December 23, 2002. The compacts themselves were signed by state air quality officials, representatives of the local communities, and the Regional Administrator for EPA Region 4. The EAC program was designed for areas that approached or monitored violations of the 8-hour ozone standard, but were in attainment for the 1-hour ozone national ambient air quality standard (the 1-hour ozone standard). The 1-hour ozone standard will be revoked for counties in EAC areas one year after the effective dates of their respective 8-hour ozone designations. 40 CFR 50.9(b).

As part of the EAC program, EPA deferred the effective date of the nonattainment designations for EAC areas that were violating the 8-hour ozone standard, but continue to meet the milestones described in the EAC Protocol. Details of this deferral were published in the **Federal Register** on April 30, 2004 (69 FR 23858). On June 8, 2005, EPA proposed to extend the deferred effective date of the nonattainment designation through December 31, 2006 (70 FR 33409), for EAC areas that have met their obligations. A subsequent action will continue the deferral until December 31, 2007, when attainment evaluations will begin. Pursuant to the EAC Protocol, the designation process is scheduled to be completed by April 15, 2008. To date, the North Carolina EAC Areas have met all EAC milestones. In April, 2008, it is anticipated that EAC areas with air quality monitoring data showing attainment for the years 2005–2007, that have also met all the compact milestones, will be designated attainment for the 8-hour ozone standard. EPA believes that early planning and implementation of control measures that improve air quality will likely accelerate protection of public health. The EAC program allows participating state and local entities to make decisions that will accelerate meeting the new 8-hour ozone standard using a mix of local, State, and Federal measures. All of the measures being adopted today as part of the SIP revisions will be mandatory and federally enforceable.

Brief Summary of Control Measures and Modeling

The details of the SIP revisions being approved today are available for review under RME ID No. R04–OAR–2004–NC–0005. In addition, the measures discussed in this paragraph are applied differently to different areas depending on the specific area's designation (*i.e.*, unclassifiable/attainment or nonattainment-deferred). Generally, the SIP revisions include emissions inventory, modeling, control strategies, and maintenance for growth elements as required by the EAC Protocol. With regard to control measures, North Carolina's SIP revisions include Federal, State, and local control measures. The Federal control measures include, among others, Tier 2 vehicle standards and low sulfur fuel. The State of North Carolina's Clean Smokestack's Act (a recently enacted state law) is an example of a statewide control measure being approved as part of the SIP revisions. Other state control measures, such as expansion of the statewide vehicle inspection and maintenance program, and the NO_X SIP Call Rule, are

[1] The 8-hour ozone standard was promulgated on July 18, 1997 (62 FR 38856).

[2] As discussed in the April 30, 2004 designations and the May 26, 2005 proposal for the North Carolina SIP revisions, the North Carolina EAC Areas include counties designated as unclassifiable/attainment and nonattainment-deferred. The specific measures included in the SIP revisions may be different depending on the specific county's designation.

[3] Further information about the EAC program is available in the EAC Protocol and prior **Federal Register** notices available at *http://www.epa.gov/air/eac/*.

already part of the SIP. Implementation of the state measures will occur at a local level through county involvement in both implementation and enforcement. The local control measures include, among others, eliminating the use of coal-fired boilers during the ozone season at an RJ Reynolds facility in the Triad EAC area, truck stop electrification, and local ordinances regarding landscaping. All of these measures, including the local measures, will be enforceable once they are incorporated into the SIP.

In addition to control measures, the North Carolina SIP revisions also include a maintenance for growth plan that meets and exceeds the minimum requirements of the EAC Protocol for such a plan. The EAC Protocol requires that maintenance be demonstrated through 2012. In summary, the North Carolina plan demonstrates attainment until 2017, commits to a mid-point evaluation in 2012, and commits to develop a second 10-year maintenance plan from 2017–2027, among other elements.

The State of North Carolina used a process known as photochemical modeling to evaluate attainment and maintenance of the 8-hour ozone standard. Photochemical modeling performed by North Carolina used control measures to model attainment and maintenance of the 8-hour ozone standard through 2017, passing the attainment test for 2007, 2012, and 2017. Photochemical modeling is consistent with the EAC Protocol and the EPA Draft modeling guidance that was provided to EAC areas.[4] In summary, the North Carolina modeling was based upon base year emissions data from specific days in 1995, 1996, and 1997, with a ''current'' year of 2000. For further information on North Carolina's modeling, see RME ID No. R04–OAR–2004–NC–0005.

II. Today's Action

Today we are taking final action to approve revisions to the North Carolina SIP under sections 110 and 116 of the CAA, 42 U.S.C. 7410 and 7416. The SIP revisions are consistent with the EAC Protocol and related regulations. These revisions demonstrate attainment of the 8-hour ozone standard within the North Carolina EAC Areas by 2007, maintain it for five or more years beyond 2007, and incorporate the control measures developed by these EAC Areas into the North Carolina SIP.

[4] This guidance can be found at *http://www.epa.gov/ttn/naaqs/ozone/eac/index.htm#Guidance.*

III. Response to Comments

EPA Region 4 received a number of comments in response to the May 26, 2005, proposal to approve the North Carolina EAC Area SIP revisions. The majority of the comments expressed support for the EAC process and the goal of clean air sooner. Several commenters further noted that the measures included in the SIP revisions demonstrate attainment of the ozone standard by December 31, 2007. These commenters supported EPA's proposal to approve the North Carolina EAC Area SIP revisions. EPA received one comment that raised concerns about EPA's proposal to approve the North Carolina EAC Area SIP revisions, although the issues raised by this commenter were not directly relevant to the May 26, 2005, proposal.

In the only unsupportive comment received, the commenter commended North Carolina for the steps it has taken to improve air quality, but noted opposition to today's action for two reasons. First, the SIP revisions provide for the deferment of a nonattainment designation until a future date potentially as late as December 31, 2007; second, the revisions relieve the area of obligations under Title I, Subpart D of the CAA. These two issues are directly related to the proposed deferral of the nonattainment designations for the North Carolina EAC Areas, published on June 8, 2005 (70 FR 33409), and not to today's approval of the actual SIP revisions. In addition, these issues were raised by the same commenter to EPA in response to the June 8, 2005, deferral proposal. Because this comment relates to deferral issues, and was also submitted in response to the proposed deferral, it will be responded to by EPA in our subsequent rulemaking addressing the deferred effective date for nonattainment designations for EAC areas. When published, this final deferral rule will be available on the EAC Web site *http://www.epa.gov/air/eac/*. Notably, contrary to the comment, today's action neither provides for deferral of the nonattainment designation nor relieves an area from obligations under Title I, Subpart D of the CAA.

IV. Final Action

EPA is approving the revisions to the North Carolina SIP submitted on December 21, 2004, pursuant to the EAC Protocol and resulting in emission reductions needed to attain and maintain the 8-hour ozone standard in the Mountain, Unifour, Triad and Fayetteville EAC Areas.

V. Statutory and Executive Order Reviews

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

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

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus

standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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 in 40 CFR Part 52

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

Dated: August 15, 2005.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart II—North Carolina

■ 2. Section 52.1770(e) is amended by adding a new entry at the end of the table for ''North Carolina Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NORTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA approval date	Federal Register citation
* * *	*	* *	*
Attainment Demonstration of the Mountain, Unifour, Triad and Fayetteville Early Action Compact Areas.	December 21, 2004	September 21, 2005	[Insert first page number of publication].

[FR Doc. 05–16596 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0010; FRL–7955–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Attainment Demonstration of the San Antonio Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Chairman of the Texas Commission on Environmental Quality (TCEQ) on December 6, 2004. The revisions demonstrate attainment of the 8-hour ozone standard and incorporate the San Antonio Early Action Compact (EAC) Clean Air Plan into the Texas SIP. EPA is approving the photochemical modeling in support of the attainment demonstration of the 8-hour ozone standard within the San Antonio EAC area and is approving the associated control measures. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act), and will result in emission reductions needed to achieve attainment of and maintain the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on September 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06–OAR–2005–TX–0010. 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 type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at 214–665–7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

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

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

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, *paige.carrie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''our,'' and ''us'' is used, we mean EPA.

Outline

I. Background
II. What Action Is EPA Taking?
III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for San Antonio?
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 23, 2005, EPA proposed approval of the San Antonio EAC area's Clean Air Plan (CAP), the photochemical modeling in support of the attainment demonstration and related control measures as revisions to the SIP submitted to EPA by the Texas Commission on Environmental Quality. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 22, 2005. See the Technical Support Documents or our proposed rulemaking at 70 FR 29466 for more information. One adverse comment was received on EPA's proposed approval of the San Antonio EAC area's CAP and 8-hour ozone attainment demonstration for the EAC area.

II. What Action Is EPA Taking?

Today we are approving revisions to the Texas SIP under sections 110 and 116 of the Act. The revisions demonstrate attainment of the 8-hour ozone standard within the San Antonio EAC area. The revisions include the San Antonio EAC CAP, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby attain and maintain the 8-hour ozone standard.

III. What Comments Did EPA Receive on the May 23, 2005 Proposed Rulemaking for San Antonio?

We received one comment letter on the May 23, 2005 proposed rulemaking. The letter provided both supportive and adverse discourse, commending the State of Texas for steps it has taken to improve air quality. The commenter opposes approval of the SIP revision because it (1) provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The commenter contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation or to relieve areas of the obligations of Part D of Title I of the Act when areas are violating the standard and designated nonattainment.

Response: We appreciate the support expressed towards the State of Texas and towards the efforts made to achieve and maintain the 8-hour ozone NAAQS. We continue to believe that the EAC program, as designed, gives San Antonio the flexibility to develop their own approach to meeting the 8-hour ozone standard and believe San Antonio is serious in their commitment to control emissions from local sources earlier than the Act would require. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, San Antonio is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. People living in the San Antonio EAC area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

The commenter incorrectly asserts that the SIP revision provides for deferment of the effective date of the area's nonattainment designation. The SIP revision does not purport to alter the area's effective date of designation for the 8-hour standard. In the 8-hour designation rule published April 30, 2004, EPA designated 14 EAC areas as nonattainment, but deferred the effective date of the designation until September 30, 2005. While approval of the CAP is a prerequisite for an extension of the deferred effective date for the San Antonio EAC, *see* 40 CFR 81.300(e)(3), neither the proposed approval of this SIP nor this final action approving the SIP purports to extend the deferral of the effective date of the nonattainment designation for this area. In a separate proposed rule, EPA proposed to extend to December 31, 2006, the deferral of the effective date for all 14 EAC areas that received deferrals to September 30, 2005 in the April 2004 designation rules. In a separate notice, EPA will consider comments regarding its legal authority to issue such deferrals in the final rulemaking action on the deferral. Additionally, we note that the requirements of part D of title I of the CAA are triggered when an area has an effective 8-hour ozone nonattainment designation. EPA's approval of the CAP for San Antonio does not affect whether the requirements of part D apply in the San Antonio area. Rather, it is EPA's separate actions regarding the effective date of the area's designation that affects whether and when the nonattainment provisions of part D might apply.

IV. Final Action

EPA is approving the attainment demonstration, the San Antonio EAC CAP, and the related control measures and incorporating these revisions into the Texas SIP as a strengthening of the SIP. We have determined that the CAP control measures included in the attainment demonstration are quantified, surplus, permanent, and will be Federally enforceable SIP revisions. The modeling of ozone and ozone precursor emissions from sources in the San Antonio EAC area demonstrate that the specified control strategies will provide for attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. We have reviewed the CAP and the attainment demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 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. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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 dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart SS—Texas

■ 2. The second table in § 52.2270(e) entitled ''EPA approved nonregulatory provisions and quasi-regulatory measures in the Texas SIP'' is amended by adding a new entry, immediately following the last entry in the table, to read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

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

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* *	* *	*	*	*
Clean Air Plan, 8-hour ozone standard attainment demonstration and Transportation Emission Reduction Measures (TERMs) for the San Antonio EAC area.	Bexar, Comal, Guadalupe, and Wilson Counties, TX.	12/06/04	8/22/05 [Insert *FR* page number where document begins].	

[FR Doc. 05–16475 Filed 8–19–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–LA–0001; FRL –7955–7]

Approval and Promulgation of Air Quality Implementation Plans; Louisiana; Attainment Demonstration for the Shreveport-Bossier City Early Action Compact Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality (LDEQ) on December 28, 2004. The revisions will incorporate the Shreveport-Bossier City Metropolitan Statistical Area (MSA) Early Action Compact (EAC) Air Quality Improvement Plan (AQIP) into the Louisiana SIP. EPA is approving the photochemical modeling in support of the attainment and maintenance demonstration for the 8-hour ozone standard within the Shreveport-Bossier City EAC area and is approving the associated control measures. These actions strengthen the SIP in accordance with the requirements of sections 110 and 116 of the Federal Clean Air Act (the Act) and will result in emission reductions needed to ensure continued attainment and maintenance of the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone.

DATES: This final rule is effective on September 21, 2005.

ADDRESSES: EPA has established a docket for this action under Regional Materials in EDocket (RME) ID No. R06–OAR–2005–LA–0001. 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 type in the appropriate RME docket identification number. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information or other information the disclosure of which 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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below, or Mr. Bill Deese at 214–665–7253, to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cents per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

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

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Carrie Paige, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6521, paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''our,'' and ''us'' is used, we mean EPA.

Outline

I. Background
II. What Action Is EPA Taking?
III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for the Shreveport-Bossier City EAC Area?
IV. Final Action
V. Statutory and Executive Order Reviews

I. Background

On May 12, 2005, EPA proposed approval of the Shreveport-Bossier City EAC area's Air Quality Improvement Plan (AQIP), the photochemical modeling in support of the attainment and maintenance demonstration and related control measures as revisions to the SIP submitted to EPA by the State of Louisiana. The photochemical modeling predicts that the 8-hour ozone standard should continue to be attained through December 31, 2007 and maintained through 2012. The proposal provides a detailed description of these revisions and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on June 13, 2005. See the Technical Support Document or our proposed rulemaking at 70 FR 25000 for more information. Two comment letters were received on EPA's proposed approval of the Shreveport-Bossier City EAC area's AQIP and 8-hour ozone attainment demonstration for the EAC area.

II. What Action Is EPA Taking?

Today we are approving revisions to the Louisiana SIP under sections 110 and 116 of the Act. The revisions demonstrate continued attainment and maintenance of the 8-hour ozone standard within the Shreveport-Bossier City EAC area. The revisions include the Shreveport-Bossier City EAC AQIP, photochemical modeling and related control measures. The intent of the SIP revisions is to reduce ozone pollution and thereby maintain the 8-hour ozone standard.

III. What Comments Did EPA Receive on the May 12, 2005 Proposed Rulemaking for Shreveport-Bossier City?

We received two comment letters on the May 12, 2005 proposed rulemaking for Shreveport-Bossier City. The comments provided both supportive and adverse discourse.

Comment: One letter supports EPA's approval of the EAC SIP revisions and one letter commends the State of Louisiana for steps it has taken to improve air quality.

Response: We appreciate the support expressed towards the State of Louisiana and towards the efforts made to ensure that the citizens in the Shreveport-Bossier City EAC area continue to breathe clean air. We continue to believe that the EAC program, as designed, gives the Shreveport-Bossier City area the flexibility to develop their own approach to maintaining the 8-hour ozone standard and believe the Shreveport-Bossier City area is serious in their commitment to control emissions from local sources. By involving diverse stakeholders, including representatives from industry, local and State governments, and local environmental and citizen groups, the Shreveport-Bossier City area is implementing regional cooperation in solving air quality problems that affect the health and welfare of its citizens. Through implementation of the AQIP, people living in the Shreveport-Bossier City area will realize reductions in pollution levels and enjoy the health benefits of cleaner air sooner than might otherwise occur.

Comment: One letter opposes approval of the SIP revision. The letter contends that, should the area experience a violation of the 8-hour ozone standard, the SIP revision (1)

provides for the deferment of the area's nonattainment designation to as late as December 31, 2007, and (2) relieves the area of its obligations under Title I, Subpart D of the Act. The letter further contends that EPA does not have the legal authority to defer the effective date of an area's nonattainment designation nor to relieve areas of the obligations of Part D of Title I of the Act when areas are violating the standard and designated nonattainment.

Response: In the April 2004 designation rule (69 FR 23858), the Shreveport-Bossier City EAC area was designated as attainment for the 8-hour ozone NAAQS. The commenter incorrectly asserts that approval of this SIP revision provides for deferment of the designation of the area as nonattainment should the area experience a violation of the 8-hour ozone standard. Nor does EPA's approval of this SIP alter the applicability of the redesignation provision of the Act should the Shreveport-Bossier City EAC area experience a violation of the 8-hour ozone NAAQS in the future. Section 107(d)(3)(A) provides that EPA may redesignate an area ''on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.'' Should the Shreveport-Bossier City EAC area experience a violation of the 8-hour ozone NAAQS in the future, EPA would consider these statutory factors in determining whether to redesignate the area to nonattainment for the 8-hour ozone NAAQS. Finally, approval of this SIP does not relieve the Shreveport-Bossier City EAC area of the requirements of Part D of Title I of the Act. These provisions apply to areas designated nonattainment. Because the Shreveport-Bossier City EAC area is designated attainment for the 8-hour ozone NAAQS, these provisions do not apply in the Shreveport-Bossier City EAC area.

IV. Final Action

EPA is approving the attainment and maintenance demonstration, the Shreveport-Bossier City EAC AQIP, and the related control measures and incorporating these revisions into the Louisiana SIP. We have determined that the control measures included in the attainment demonstration are quantified, surplus, permanent, and are Federally enforceable once approved into the SIP. The modeling of ozone and ozone precursor emissions from sources in the Shreveport-Bossier City EAC area demonstrate that the specified control strategies will provide for continued attainment of the 8-hour ozone NAAQS by December 31, 2007 and maintenance of that standard through 2012. We have reviewed the AQIP and the attainment and maintenance demonstration and determined that they are consistent with the requirements of the Act, EPA's policy, and the EAC protocol.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason and because this action will not have a significant, adverse effect on the supply, distribution, or use of energy, 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 under the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note), 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 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. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 21, 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 dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: August 12, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart T—Louisiana

■ 2. The second table in § 52.970(e) entitled ''EPA approved Louisiana nonregulatory provisions and quasi-regulatory measures'' is amended by adding a new entry, immediately following the last entry in the table, to read as follows:

§ 52.970 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED LOUISIANA NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date/effective date	EPA approval date	Explanation
*	*	*	*	*
Air Quality Improvement Plan, 8-hour ozone standard attainment demonstration and associated control measures for the Shreveport-Bossier City EAC area.	Bossier, Caddo and Webster Parishes, LA.	12/28/2004	8/22/05 [Insert *FR* page number where document begins].	

[FR Doc. 05–16476 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2520, 2521, 2522, 2540 and 2550

RIN 3045–AA41

AmeriCorps National Service Program

ACTION: Final rule; correction.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation'') is correcting a final rule that appeared in the **Federal Register** of July 8, 2005. The document amended several provisions relating to the AmeriCorps national service program, and added rules to clarify the Corporation's requirements for program sustainability, performance measures and evaluation, capacity-building activities by AmeriCorps members, qualifications for tutors, and other requirements.

DATES: Effective September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, Associate Director for Policy, Department of AmeriCorps, Corporation for National and Community Service, 1201 New York Avenue, NW., Washington, DC 20525, (202) 606–5000, ext. 132. T.D.D. (202) 606–3472. Persons with visual impairments may request this rule in an alternative format.

SUPPLEMENTARY INFORMATION:

■ In FR Doc. 05–13038 appearing on page 39562 in the **Federal Register** of Friday, July 8, 2005 (70 FR 39562), the following corrections are made:

■ 1. On page 39585, in the second column, in the first full paragraph, the beginning of the first sentence ''Note, however, that 133'' is corrected to read ''Note, however, that section 133''.

PART 2521—ELIGIBLE AMERICORPS SUBTITLE C PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

§ 2521.35 [Corrected]

■ 2. On page 39598, in the second column, in § 2521.35, in paragraph (b), after the comma, ''and you are also responsible for meeting an aggregate overall match based on your grantees' match individual match requirements.'' is corrected to read ''and you are also responsible for meeting an aggregate overall match based on your grantees' individual match requirements.''

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

§ 2522.520 [Corrected]

■ 3. On page 39603, in the third column, in § 2522.520, the second paragraph (h) is correctly redesignated as paragraph (i).

Dated: August 15, 2005.

Frank R. Trinity,

General Counsel.

[FR Doc. 05–16511 Filed 8–19–05; 8:45 am]

BILLING CODE 6050–28–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 6101

[GSABCA Amendment 2005–01; BCA Case 2005–61–1]

Board of Contract Appeals; Rules of Procedure of the General Services Administration Board of Contract Appeals

AGENCY: Board of Contract Appeals, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This document contains final revisions to the rules governing proceedings before the General Services Administration Board of Contract Appeals (Board). The Board is revising the language regarding the processing of awards for payment in contract appeals. The Board, by majority vote, has adopted this revised rule pursuant to its authority contained in the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

DATES: *Effective Date*: August 22, 2005.

FOR FURTHER INFORMATION CONTACT Margaret S. Pfunder, Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, internet address *margaret.pfunder@gsa.gov*. Please cite GSABCA Amendment 2005–01, BCA Case 2005–61–1.

SUPPLEMENTARY INFORMATION:

A. Background

Section 6101.36 is amended to conform to procedures required by the Department of the Treasury in processing awards for payment from the Judgment Fund. The Contract Disputes Act of 1978, 41 U.S.C. 612, provides that a monetary award to a contractor from

a Board of Contract Appeals shall be paid promptly from the Judgment Fund. The Department of the Treasury's Financial Management Service (FMS), through the Treasury Financial Manual, volume I, part 6, chapter 3100, requires that the Government agency ''responsible for defending the United States'' in litigation or ''authorized to settle the claim'' in administrative actions submit completed copies of specified forms to FMS in order to process payment of monetary awards from the Judgment Fund. These requirements have superseded the procedures contained in section 6101.36, and the revised section 6101.36 reflects these requirements. This revision only affects paragraphs (c) and (d) of section 6101.36.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional costs on either small or large businesses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 6101

Administrative practice and procedure, Government procurement.

Dated: August 15, 2005.

Stephen M. Daniels,

Chairman, Board of Contract Appeals, General Services Administration.

■ Therefore, GSA amends 48 CFR part 6101 as set forth below:

PART 6101—RULES OF PROCEDURE OF THE GENERAL SERVICES ADMNISTRATION BOARD OF CONTRACT APPEALS (STANDARD PROCEEDINGS)

■ 1. The authority citation for 48 CFR part 6101 continues to read as follows:

Authority: 41 U.S.C. 601–613.

■ 2. Amend section 6101.36 by revising paragraphs (c) and (d) to read as follows:

6101.36 Payment of Board awards [Rule 136].

* * * * *

(c) *Procedure for filing of certificates of finality.* Whenever the Board issues a decision or an order awarding a party any amount of money, it will attach to the copy of the decision sent to each party forms such as those illustrated in the appendix to this part. The conditions for payment prescribed in paragraph (b)(1) of this section are satisfied if each of the parties returns a completed and duly executed copy of this form to the Board. When the form is executed on behalf of an appellant or applicant by an attorney or other representative, proof of signatory authority shall also be furnished. Upon receipt of completed and duly executed Certificates of Finality from the parties, the Board will forward a copy of each such certificate (together with proof of signatory authority, if required) and a certified copy of its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment.

(d) *Procedure in absence of certificate of finality.* When one or both of the parties fails to submit a duly executed Certificate of Finality, but the conditions for payment have been satisfied as provided in paragraph (b)(2) of this section, the appellant or applicant may file a written request that the Board forward its decision to the responsible agency for certification and transmission to the United States Department of the Treasury for payment. Thereupon, the Board will forward a copy of that request and a certified copy of its decision to the responsible agency.

* * * * *

[FR Doc. 05–16479 Filed 8–19–05; 8:45 am]

BILLING CODE 6820–AL–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. NHTSA 2005–22052]

RIN 2127–AI38

Federal Motor Vehicle Safety Standards; Seat Belt Assemblies

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

ACTION: Final rule.

SUMMARY: This final rule amends the Federal motor vehicle safety standard (FMVSS) for seat belt assemblies to redefine the requirements and to establish a new test methodology for emergency-locking retractors. Specifically, this final rule establishes a new acceleration-time corridor, adds a figure illustrating the new acceleration-time corridor, provides a tolerance on angle measurements, and adopts the same instrumentation specifications currently found in other FMVSSs containing crash tests.

DATES: *Effective Date:* This final rule is effective October 21, 2005. The incorporation by reference of a certain publication listed in the regulation is approved by the Director of the Federal Register as of October 21, 2005.

Compliance Date: Seat belt assemblies manufactured on or after February 22, 2007 must comply with this rule. Voluntary compliance is permitted prior to that date.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 6, 2005.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VI; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Christopher Wiacek, Office of Crashworthiness Standards (Telephone: 202–366–4801) (Fax: 202–493–2290).

For legal issues, you may call Mr. Eric Stas, Office of the Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
II. Background
III. June 2004 Notice of Proposed Rulemaking (NPRM) and Public Comments
  A. The NPRM
  B. Summary of Public Comments on the NPRM
IV. The Final Rule and Response to Public Comments
  A. Summary of the Requirements
  B. Lead Time

C. Response to Public Comments by Issue
1. Acceleration-Time Corridor
2. Data Acquisition
3. Tolerances
4. Request for Comments on Specific Issues
5. Lead Time
6. Other Issues
V. Benefits and Costs
VI. Rulemaking Analyses and Notices

I. Executive Summary

In response to a petition for rulemaking, NHTSA published a notice of proposed rulemaking [1] on June 3, 2004, which proposed to amend FMVSS No. 209, *Seat Belt Assemblies,* by redefining the requirements and establishing a new test methodology for emergency-locking retractors (ELRs). As noted above, the NPRM proposed to establish a new acceleration-time (A–T) corridor, to add a figure illustrating the new A–T corridor, to provide a tolerance on angle measurements, and to adopt the same instrumentation specifications currently found in other FMVSSs containing crash tests. The purpose of these proposed amendments was to clarify the test procedures for ELRs, while ensuring that those devices continue to perform their important safety function of locking up a seat belt in the event of a crash or emergency braking.

After careful consideration of all available information, including public comments, the agency has decided to retain in this final rule the approach set forth in the NPRM, with minor technical modifications. All such modifications and the accompanying rationale are discussed fully in the balance of this document. The following points highlight the key changes to FMVSS No. 209 resulting from the final rule.

- The final rule modifies that portion of FMVSS No. 209's test procedures relevant to ELRs by adopting a new Figure 8, which provides a specified acceleration-time corridor for test pulses. The A–T corridor includes an upper boundary onset rate of 375 g/sec and permits acceleration to peak at up to 0.8 g. The lower boundary of the A–T corridor allows for a minimum onset rate of 21.67 g/sec. The steady-state tolerance range is from 0.65 g to 0.72 g.
- During dynamic testing, the final rule requires each acceleration pulse to be recorded using an accelerometer having a full scale range of ±10 g and to be processed according to the practices set forth in Society of Automotive Engineers (SAE) Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' Channel Frequency Class 60. (That SAE standard has been incorporated by reference into FMVSS No. 209.) Webbing displacement is required to be measured using a displacement transducer.
- Unless a range of angles is specified or a tolerance is otherwise explicitly provided, the final rule states that all angles and orientations of seat belt assemblies and components specified in the standard shall have a tolerance of ±3 degrees.

Manufacturers of seat belt assemblies must comply with the requirements of the final rule commencing on February 22, 2007. Voluntary compliance is permitted prior to the mandatory compliance date.

In terms of the impacts, the agency anticipates that this final rule will not result in substantial changes to the performance of ELRs and that current ELRs will continue to comply with FMVSS No. 209 without change. Instead, the final rule clarifies the specifications in the standard's test procedures. Furthermore, we expect that this rule will result in only a minimal cost burden to vehicle manufacturers. Testing laboratories might need to purchase new equipment, but this one-time cost is likewise expected to be minimal on a cost-per-vehicle basis.

II. Background

The seat belt emergency-locking retractor is a device that was first developed in the 1960's for the purpose of maintaining occupant position during rapid vehicle deceleration. Since its inception, the ELR's locking sensitivity has been an important issue because of the need to assure that the retractor would lock very early during a collision or emergency braking, but not be so sensitive as to cause ''nuisance'' locking during routine driving.

Based upon the limited knowledge and technology available at that time, the SAE Motor Vehicle Seat Belt Committee (MVSBC) developed Recommended Practice SAE J–4b, *Motor Vehicle Seat Belt Assemblies*, and subsequently, SAE J–4c, *Motor Vehicle Seat Belt Assemblies*. These Recommended Practices provided performance requirements, laboratory test procedures, and minimal design requirements for seat belt assemblies for use in motor vehicles, in order to minimize the risk of bodily harm in an impact. In promulgating FMVSS No. 209, NHTSA ultimately adopted SAE J–4c, although the test methodologies for ELRs developed by SAE were not clearly defined. As a result, the test methodology, instrumentation, and measurements for assessing conformance were not explicitly described in S4.3(j) and S5.2(j) of FMVSS No. 209. This situation has not changed appreciably since adoption of our safety standard in a final rule published in the **Federal Register** on February 3, 1967.[2]

Currently, there are two modes of ELR sensors in production: (1) webbing withdrawal-sensitive ELRs and (2) vehicle acceleration-sensitive ELRs. The latter mode of a retractor responds directly to a 0.7 g acceleration pulse, and lock-up usually occurs within a short period of time. The former mode of a retractor responds to the webbing withdrawal speed, which slowly builds up from zero to the threshold (*i.e.*, lock-up) speed, when the assembly is subjected to the 0.7 g acceleration pulse. As a result, a longer time period may be required for the webbing-sensitive type of retractor to respond.

Despite the two different basic ELR designs, FMVSS No. 209 has a unified set of requirements for compliance testing. Specifically, under S4.3(j)(1) of FMVSS No. 209, an emergency-locking retractor of a Type 1 or Type 2 seat belt assembly,[3] when tested in accordance with S5.2(j), ''shall lock before the webbing extends 25 mm when the retractor is subject to an acceleration of 7 m/s^2 (0.7 g).'' Paragraph S5.2(j) of the standard states in relevant part that ''[t]he retractor shall be subject to an acceleration of 7 m/s^2 (0.7 g) within a period of 50 milliseconds (ms), while the webbing is at 75 percent extension[.]''

In addition, FMVSS No. 209 establishes a sensitivity threshold for ELRs to prevent ''nuisance'' locking during routine driving. Under S4.3(j)(2), an ELR sensitive to vehicle acceleration must not lock up when the retractor is rotated in any direction to any angle 15 degrees or less. Under S4.3(j)(3), an ELR sensitive to webbing withdrawal must not lock up before the webbing extends 51 millimeters (mm) when the retractor is subject to an acceleration of 0.3 g or less.

Based upon FMVSS No. 209, the agency developed a laboratory test procedure for its compliance laboratories to follow, which provides more detail concerning test set up. The most recent version, TP–209–05,[4] was issued on January 17, 2003. In relevant

[1] 69 FR 31330 (June 3, 2004) (Docket No. NHTSA–2004–17980–1).

[2] 32 FR 2408, 2415 (Feb. 3, 1967).

[3] Under S3 of FMVSS No. 209, a ''Type 1 seat belt assembly'' is defined as ''a lap belt for pelvic restraint,'' and a ''Type 2 seat belt assembly'' is defined as ''a combination of pelvic and upper torso restraints.''

[4] *See http://www.nhtsa.dot.gov/staticfiles/DOT/NHTSA/Vehicle%20Safety/Test%20Procedures/Associated%20Files/TP–209–05.pdf.*

part, that laboratory test procedure specifies the use of a 0.72 g acceleration pulse, which is intended to ensure that the retractor will be subject to at least 0.7 g during testing, as required by the standard. This test pulse accounts for calibration and accuracy ranges of the test equipment.

In order to gain a better understanding of the seat belt emergency-locking retractor test procedures and performance requirements, the Automotive Occupant Restraints Council (AORC [5]) wrote a letter to NHTSA requesting an interpretation of S4.3(j) and S5.2(j) of FMVSS No. 209. The AORC stated that neither the SAE Committee nor NHTSA addressed the onset rate range and the deceleration tolerance for ELRs when their respective standards were developed or since that time. The AORC stated its belief that the intent of both the SAE Committee and NHTSA at the time FMVSS No. 209 was adopted was to mimic a hard braking deceleration pulse in which the 0.7 g level should be achieved with a sharp onset rate, followed by steady-state deceleration. NHTSA responded through an interpretation letter to Mr. Steven Fredin dated February 4, 2000.[6] However, the AORC did not agree with the position expressed in the interpretation letter and subsequently submitted a petition for rulemaking on June 2, 2000.[7]

The AORC petition requested that NHTSA amend paragraphs S4.3(j) and S5.2(j) of FMVSS No. 209 to specify: (A) a rate of onset; [8] (B) an acceleration pulse duration; (C) an acceleration tolerance level, and (D) a subsequent acceleration decay.[9] In addition, the AORC requested that NHTSA apply the same instrumentation specifications to those provisions as are used in other FMVSSs with dynamic performance requirements.

The AORC argued that it is necessary to amend the standard because many acceleration pulses conform to S4.3(j) and S5.2(j) in theory, but those pulses would cause retractors, currently compliant under FMVSS No. 209, to fail the locking requirements within the 25 mm webbing payout. Furthermore, the AORC asserted that NHTSA's interpretation letter permits testing methodologies that no known ELR could possibly meet. The petition provided several example pulses that, according to the AORC, would conform to the criteria in the interpretation letter, but would not be sufficient to consistently lock a production retractor.

In suggesting a means of addressing these concerns, the AORC petitioned that S5.2(j) should include a specific A–T corridor, with maximum and minimum acceleration onset rates matching those specified in the Economic Commission for Europe Regulation No. 16, *Uniform Provisions Concerning the Approval of: Safety Belts and Restraint Systems for Occupants of Power-Driven Vehicles and Vehicles Equipped with Safety Belts* (ECE R16). The AORC also stated that the acceleration and the webbing displacement recording techniques should conform to SAE Recommended Practice J211–1 rev. March 1995, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation'' (SAE J211–1, rev. Mar. 1995). In addition, the AORC petition stated that the safety standard should require that the signals should be filtered with an SAE Class 60 filter, and that the accelerometer should be an instrumentation-grade, high-accuracy, ±10 g device. The AORC contended that the addition of an A–T corridor and specification of the test methodology and instrumentation, in a manner consistent with its petition, would create needed objectivity and fully clarify the standard in this area.

NHTSA granted the AORC's petition to clarify the relevant provisions of FMVSS No. 209.

III. June 2004 Notice of Proposed Rulemaking (NPRM) and Public Comments

A. The NPRM

As noted above, on June 3, 2004, NHTSA published an NPRM, which proposed to address the issues raised by the AORC in its petition for rulemaking. The NPRM provided a 60-day public comment period, which was subsequently extended.[10] In general, the NPRM proposed to redefine certain requirements of FMVSS No. 209 to establish a new test methodology for emergency-locking retractors. To accommodate the time needed for vehicle manufacturers and testing laboratories to reconfigure their testing equipment in conformity with the proposed amendments, NHTSA proposed that the final rule would provide lead time of one year. The following discussion highlights the key provisions of the proposal.

Rate of Onset

The agency proposed a new acceleration corridor with an increased maximum onset rate, which represents a modified version of the A–T corridor suggested by the AORC in its petition. The proposed corridor was sufficiently wide as to allow a range of onset rates to be tested that were preliminarily determined to be more representative of real world crashes and emergency braking events. The NPRM proposed a maximum onset rate of 375 g/sec and a minimum onset rate of 16.25 g/sec, which would accommodate purely linear pulses during the first 50 ms interval.

Although the agency found that the onset rate for various crash test pulses varied greatly (from over 1,000 g/sec for crash pulses to 2 g/sec for emergency braking pulses), the agency tentatively decided that its proposed maximum onset rate would capture pulses that historically have been used for ensuring a minimum level of safety performance for the ELR in vehicle seat belts along with a wide range of acceleration pulses (including those used by the agency's compliance testing laboratories). As a result, the agency tentatively concluded that the proposed A–T corridor would permit the generation of repeatable and reproducible acceleration pulses and that the proposed onset rate corridor should eliminate the potentially problematic ''theoretical'' test pulses cited by the AORC, while at the same time maintaining the integrity of FMVSS No. 209.

Acceleration Pulse Duration

The NPRM did not propose a minimum time duration for the test pulse, as had been requested by the

[5] The Automotive Occupant Restraints Council is an industry association of 49 suppliers of occupant restraints, components/materials, and services to the automobile industry.

[6] In the February 4, 2000 letter of interpretation, the agency stated:

Nothing in the standard purports to require a consistent acceleration (or a constant rate of increase of acceleration), to establish a specific period during which the acceleration must be maintained, or to prohibit any ''decay'' after the 0.7 g level is reached. Therefore, each retractor must be able to meet the locking requirements of the standard regardless of the rate of acceleration, or the extent of any subsequent ''decay.''

See http://www.nhtsa.dot.gov/cars/rules/interps/files/aorc3.ogm.html.

[7] Docket No. NHTSA–2127–2000–7073–12.

[8] ''Onset rate'' is defined as the rate (in g/sec) at which the seat belt retractor is initially accelerated from time zero.

[9] ''Acceleration decay'' is defined as the rate (in g/sec) at which the retractor acceleration is returned to zero.

[10] The NPRM provided a public comment period through August 2, 2004. However, in a letter dated July 14, 2004, the AORC petitioned for a 60-day extension of the comment period in order to provide time for the gathering of additional technical information in response to the NPRM's proposed provisions (Docket No. NHTSA–2004–17980–4). On August 4, 2004, the agency published a notice in the **Federal Register** to extend the public comment period from August 2, 2004 to October 1, 2004, to allow the industry additional time to generate data relevant to the proposal (69 FR 47075) (Docket No. NHTSA–2004–17980–5).

AORC in its petition. The agency reasoned that once the onset rate of the acceleration pulse is given, the pulse duration that is required to produce a 25 mm webbing payout is implicitly determined. Therefore, a pulse time duration specification is not necessary.

Acceleration Tolerance Level

Based upon current compliance test data, the agency proposed that an initial peak above 0.7 g should be allowed within the first 50 ms time period of the test pulse. The proposed A–T corridor would have an upper bound of 0.8 g from 2 ms to 50 ms to allow the initial peak to exceed 0.7 g prior to reaching a ''steady-state'' response. For the remainder of the A–T corridor (*i.e.*, from 50 ms to the end of the test), the A–T corridor would be specified at 0.7 g with a +0.02/–0.05 g tolerance boundary (*i.e.*, a tolerance range between 0.72 g and 0.65 g), which is consistent with NHTSA's current compliance test procedures and test data. As discussed in the NPRM, the agency expected that the proposed A–T corridor would simulate the worst-case test condition, similar to those observed in laboratory hard (emergency) braking tests, while recognizing that acceleration may peak before reaching a ''steady-state'' condition.

Subsequent Acceleration Decay

In the NPRM, the agency stated that the proposal addresses the AORC's concerns about rapid acceleration decay after the initial peak, even though we did not include a specification for acceleration decay (*i.e.*, pulse shape and duration). The NPRM stated that the lower boundary of the proposed A–T corridor would prevent the use of acceleration pulses that have early, rapid acceleration decay. Furthermore, after either a lock-up occurs or the webbing payout reaches 25 mm, the test is officially over. The acceleration pulse after this point does not affect the test results and is no longer a concern to test accuracy (*i.e.*, after this point, it is permissible for the pulse to cross the lower boundary of the corridor).

Test Procedures and Measurement Specification

In agreement with the AORC petition, the NPRM proposed that the acceleration specifications under FMVSS No. 209 be recorded and processed according to the practices specified in SAE J211–1, rev. March 1995. Specifically, the proposal stated that the instrumentation used to record the A–T history and the webbing payout would be in conformance with the instrumentation requirements of SAE J211–1, rev. March 1995, that the electronic signals would be filtered with an SAE Class 60 filter, and that the accelerometer used for retractor testing would be an instrumentation-grade, high-accuracy, ±10 g device. The proposed instrumentation requirements were the same as those currently specified in other FMVSSs with a dynamic performance component.

As part of the proposed test procedures, the NPRM specified use of a displacement transducer to directly measure and record webbing displacement, thereby eliminating the uncertainty inherent in indirect measurement techniques (*e.g.*, numerical integration of accelerometer data). In addition, the NPRM's proposed test procedures included a tolerance of ±3 degrees for all angles and orientations of the seat belt assemblies and component, unless a range of angles is otherwise specified.

''Nuisance'' Locking

In order to address the issue of ''nuisance locking,'' the NPRM proposed to amend S4.3(j)(2) of FMVSS No. 209's test procedures to require retractors sensitive to webbing withdrawal to be subjected to an acceleration of 0.3 g occurring within a period of the first 50 ms and sustaining an acceleration no greater than 0.3 g throughout the test, while the webbing is at 75 percent extension.

Request for Comments on Specific Questions

In addition to the matters discussed above, the NPRM requested responses to several questions regarding the ability of current ELRs to comply with the proposed A–T corridor, methods used by the industry to determine when ELR lock-up occurs, and potential modifications to the proposal (*e.g.*, narrowing the A–T corridor).

B. Summary of Public Comments on the NPRM

NHTSA received six comments on the June 3, 2004 NPRM from a variety of interested parties including an industry association (the AORC), suppliers (Renfroe Engineering, Inc.; TK Holdings, Inc.), a vehicle manufacturer (Ford Motor Company (Ford)), a public interest group (Public Citizen), and an individual (Dr. Ave Ziv). All of these comments may be found in Docket No. NHTSA–2004–17980.

The commenters generally supported the proposal but suggested a number of modifications to the proposed requirements, including ones related to the A–T corridor, the data acquisition methodology and related equipment, tolerances, requirements for dual-sensing retractors, and lead time. The following discussion summarizes the main issues raised by these public comments and the positions expressed on these topics. A more complete discussion of the public comments is provided under Section IV.C, which provides an explanation of the agency rationale for the requirements of the final rule and addresses related public comments by issue.

At least one commenter acknowledged that existing ELRs would continue to comply with FMVSS No. 209 if the proposed A–T corridor were to be adopted, although another commenter (Ford) argued that the corridor is overly broad and, therefore, not objective. Overall, however, commenters recommended adoption of the A–T corridor with certain modifications. For example, one commenter recommended redefining the lower corridor, because of concerns that a lower onset rate could result in nuisance locking, and providing a longer locking distance. In terms of the upper portion of the corridor, at least one commenter supported the proposed upper boundary; however, another commenter argued that the high maximum onset rate is unrealistic in light of the more limited capabilities of existing test equipment, and it recommended a new upper corridor with a maximum onset rate of 150 g/sec.

One commenter sought modifications to the range of the A–T corridor after 50 ms, such that 0.7 g is at the center of the upper and lower limits of the corridor. Commenters generally agreed with the proposal to allow acceleration decay outside of the proposed corridor after the compliance test is completed.

There were several comments pertaining to the proposed data acquisition requirements, including the following points. There was support for the use of an SAE Class 60 filter. Commenters also supported use of SAE Recommended Practice J211–1, although there was a recommendation to use a more recent December 2003 version of that standard, which provides a more detailed test methodology. One commenter recommended use of a ±20 g accelerometer, rather than the ±10 g accelerometer proposed in the NPRM.

Regarding the angle tolerances of ±3 degrees proposed in the NPRM, commenters generally supported such a tolerance for most applications, unless a range is specified. However, commenters requested a tighter tolerance of ±0.5 degrees for angles and orientations specifically addressed in the proposal, in order to prevent the

need to redesign currently compliant ELRs to account for such tolerance.

Commenters also raised some issues not covered by the NPRM, such as requiring a seat belt assembly with dual-sensing retractors to comply with the standard for both designs, including the no-lock test at low accelerations. Another commenter requested specification of a defined A–T corridor for the no-lock requirement for accelerations no greater than 0.3 g.

Regarding lead time, commenters that addressed this issue requested that lead time be extended to 18 months, from the 12 months proposed in the NPRM, in order to provide companies with additional time to purchase and install new equipment, if necessary, to ensure compliance with the amended standard.

IV. The Final Rule and Response to Public Comments

A. Summary of the Requirements

After careful consideration of the public comments, in this final rule amending FMVSS No. 209, we are adopting the approach set forth in the June 2004 NPRM, with certain modifications. In general, this rule redefines the requirements and establishes a new test methodology for emergency-locking retractors. The standard is intended to be technology-neutral, so as to permit compliance with any available ELR technology that meets the standard's performance requirements.

The following points highlight the key change resulting from the final rule.

- The final rule modifies that portion of FMVSS No. 209's test procedures relevant to ELRs by adopting a new Figure 8 which provides a specified acceleration-time corridor for test pulses. The A–T corridor includes an upper boundary onset rate of 375 g/sec and permits acceleration to peak at up to 0.8 g. The lower boundary of the A–T corridor allows for a minimum onset rate of 21.67 g/sec. The steady-state tolerance range is from 0.65 g to 0.72 g.
- During dynamic testing, the final rule requires each acceleration pulse to be recorded using an accelerometer having a full scale range of ±10 g and to be processed according to the practices set forth in SAE Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' Channel Frequency Class 60. (That SAE standard has been incorporated by reference into FMVSS No. 209.) Webbing displacement is required to be measured using a displacement transducer.
- Unless a range of angles is specified or a tolerance is otherwise explicitly provided, the final rule states that all angles and orientations of seat belt assemblies and components specified in the standard shall have a tolerance of ±3 degrees.

B. Lead Time

Consistent with the request of commenters, the agency has decided to provide 18 months of lead time for manufacturers to meet the requirements of the amended standard. Accordingly, compliance with the requirements of the final rule commences for seat belt assemblies manufactured on or after February 22, 2007. Voluntary compliance is permitted prior to the mandatory compliance date.

C. Response to Public Comments by Issue

As noted previously, public comments on the June 2004 NPRM to amend FMVSS No. 209 raised a variety of issues with the NPRM's proposed requirements. Each of these topics will be discussed in turn, in order to explain how these comments impacted the agency's determinations in terms of setting requirements for this final rule.

1. Acceleration-Time Corridor

The NPRM proposed an A–T corridor with a maximum onset rate of 375 g/sec, a minimum onset rate of 16.25 g/sec, and a width sufficient to accommodate acceleration test pulses preliminarily determined to be representative of real world crashes and emergency braking events. The proposal also provided an acceleration tolerance that would permit the pulse to attain an upper bound peak of 0.8 g within the first 48 ms corridor (*i.e.*, between 2 ms and 50 ms) prior to reaching a steady-state response. For the remainder of the A–T corridor, the NPRM proposed 0.7 g with a +0.02/−0.05 tolerance boundary. (*See* Figure 8 of the NPRM.) The agency did not deem it necessary to specify a minimum time duration for the acceleration pulse or a specification for acceleration decay (*i.e.*, pulse shape and duration).

A number of commenters raised concerns about the proposed A–T corridor, including the AORC, TK Holdings, Ford, and Dr. Ziv. The AORC commented that the NPRM's expansion of the A–T corridor beyond the boundaries originally recommended in its petition for rulemaking is unnecessary. Specifically, the AORC objected to the NPRM's proposed lower onset rate, because the AORC believes that static friction in the ELR, coupled with the low onset rate, could result in nuisance locking during routine driving. To address its concern, the AORC developed a new lower A–T corridor as part of its comment submission, which reflects a compromise between the AORC's original suggested boundary and the one proposed in the NPRM. (TK Holdings supported such a compromise approach in its comments.)

The AORC further commented that if a lower onset rate were to be adopted, a longer locking distance would be required. To illustrate its point, the AORC argued that with an onset rate of 13 g/sec, the ELR would have 21.5 mm of payout available to lock up once it reached 0.7 g, as compared to 25 mm of payout being available for an ELR experiencing a nearly instantaneous rise to 0.7 g.

Regarding the upper boundary of the proposed A–T corridor, commenters expressed divergent viewpoints. TK Holdings concurred with the upper boundary presented in the NPRM. However, the AORC objected to the high onset rate (*i.e.*, 375 g/sec). Although the AORC acknowledged that high onset rates do occur during high-speed barrier crashes, it argued that these tests serve the purpose of demonstrating performance under these conditions, so no component-level test is necessary. In addition, the AORC argued that it does not know of any commercially-available, component-level test equipment that can reliably conduct a test with an onset rate above 200 g/sec. As an alternative, the AORC developed and submitted a new upper corridor, which: (1) Adopts the agency's upper corridor limit of 0.8 g; (2) modifies the limit along the ''sustain'' portion at the end of the test to 0.75 g (*i.e.*, the portion of the A–T corridor in which the steady-state response should have been achieved), and (3) provides a maximum onset rate of 150 g/sec.

TK Holdings expressed concern about the range of the corridor after 50 ms, arguing that the boundary should be controlled such that 0.7 g is at the center of the upper and lower limit of the corridor. Accordingly, TK Holdings recommended a range of 0.7 g ±0.05 g for the corridor after 50 ms.

The AORC and TK Holdings agreed with the agency's proposal to allow acceleration decay outside the proposed corridor after the compliance test is complete.

Ford commented that the NPRM's proposed A–T corridor is not objective because it is overly broad and that other concerns about test objectivity have not been adequately addressed. For example, Ford expressed concern that an agency contracting laboratory could choose an audit test pulse that is substantially different from the pulse

selected by the manufacturer. The company requested that the agency demonstrate a safety need for test pulses that are both more severe and less severe than those within the A–T corridor originally recommended by the AORC. Ford stated that if the agency does identify a safety need for the augmented regions of the A–T plot, that there should be additional, objectively-defined corridors to assess ELR compliance.

In his comments, Dr. Ziv sought clarification as to whether a retractor must meet the requirements for any acceleration pulse within the proposed corridor, or at least one acceleration pulse within the corridor.

In response to these comments, the agency has decided to modify the lower boundary of the A–T corridor in the manner suggested by the AORC in its latest submission. NHTSA's intention in proposing the lower boundary in the NPRM was to ensure that it encompassed current test pulses, particularly those with slower onset rates. Although the AORC did not provide any data to demonstrate the nature and extent of this ''nuisance locking'' problem, we believe that the AORC's proposed new lower boundary would address the concern of potential ''nuisance locking,'' while maintaining inclusion of all current test pulses. In addition, we believe that the new lower A–T corridor should minimize the variation in onset rates, while maintaining the repeatability and reproducibility of the test procedures.

Regarding comments on the upper corridor boundary, the agency has decided to adopt, as part of this final rule, the same upper corridor boundary that was presented in the NPRM. High onset rates do occur in crashes, and even though current equipment cannot generate pulses of that magnitude, technological developments may permit generation of such pulses in the future. The agency believes that a high onset rate limit is not detrimental to current ELR performance or vehicle safety. Instead, we believe that it is advantageous for manufacturers to reach 0.7 g in the shortest time period possible, because that would make the maximum amount of webbing payout available to achieve compliance. In addition, we believe that the specificity in the final rule's data acquisition methodology (discussed below) will prevent the generation of unreliable test pulses with overly-high onset rates.

Although the maximum onset rate recommended by the AORC would (barely) encompass current test pulses, we do not believe that the AORC has demonstrated a need for its recommended change. In addition, the AORC did not provide evidence to demonstrate a compliance problem with its test pulses to meet a steady-state tolerance between 0.65 g and 0.72 g, as would justify its request to change the upper limit on the ''sustain'' portion of the boundary to 0.75 g; all test pulses included in the AORC's comments fell within the proposed tolerance, and the pulses generated by the agency during compliance testing similarly fell within that range.

In response to the AORC's comment regarding adoption of a longer locking distance, we have decided that such an amendment is not necessary for this new lower corridor. We believe that the test pulses, arising under the final rule, would provide sufficient onset rates to adequately permit enough webbing payout to comply with the standard.

We do not agree with Ford's opinion that the proposed A–T is overly broad and, therefore, not objective. NHTSA did not have an issue with performance of the existing test pulses used for compliance purposes. We found that those acceleration pulses have proven repeatable, reproducible, and indicative of pulse experience in the real world. The proposed A–T corridor was developed to ensure inclusion of these pulses, and in contrast to Ford's characterization, the proposed A–T corridor actually narrows the range of potential test pulses and addresses potential problems arising from the need to certify to theoretical pulses that might not exist in real world events. We believe that the proposed test corridor (further narrowed in the final rule through adoption of the AORC's newly suggested lower boundary) is objective because it clearly delineates which pulses are valid for the test procedure, thereby helping to meet the safety need of ensuring proper ELR lock-up. Furthermore, Ford did not state the criteria it believes necessary to define a corridor narrow enough to be objective. We would also note that, by definition, a corridor will accommodate more than one pulse; therefore, there will always be the possibility that the agency will choose to test a different pulse than the manufacturer.

In response to Dr. Ziv's comment, we would clarify that the ELR must meet the standard's requirements for any and all acceleration pulses that could be generated within the A–T corridor. Otherwise, proper functioning of the ELR could be limited to a highly targeted subset of the conceivable test pulses than would otherwise occur in actual crash events.

2. Data Acquisition

The NPRM proposed that the acceleration specifications under FMVSS No. 209 be recorded and processed according to the practices specified in SAE J211–1, rev. March 1995. It also proposed to require electronic signals to be filtered with an SAE Class 60 filter and use of an instrumentation-grade, high-accuracy ±10 g accelerometer. The proposal also called for use of a displacement transducer to measure webbing displacement. (*See* S5.2(j)(3) of the NPRM.)

While generally supporting the aspect of the agency's proposal that would require proper filtering, TK Holdings recommended that, as part of the final rule, NHTSA require use of a ±20 g full-scale accelerometer because of the potential for damage to a ±10 g accelerometer during testing.

Both the AORC and Ford supported specification of the SAE Class 60 filter. However, they commented that NHTSA should further define the accelerometer type and that hardware/digital filters should be added in order to ensure objective test results. The AORC stated that in order to ensure meaningful comparisons, the data acquisition process must include identical sample rate, accelerometer sizing/type, and filtering. Accordingly, the AORC recommended adoption of a newer version of SAE J211–1 (December 2003), which was issued since the time of its initial petition, because the AORC believes that the updated versions of the SAE standard provides a more detailed data acquisition methodology; the AORC's view is that this change would help preclude the use of erroneous test conditions and facilitate correlation of data between test laboratories.

On another matter related to data acquisition, the AORC commented that the preamble of the NPRM discussed ''direct measurement of webbing displacement,'' but that related language was not incorporated into the proposed regulatory text. The AORC concurred with NHTSA that indirect measurement of webbing displacement by means of numeric integration could impart a degree of uncertainty to the results. The AORC suggested that it is unnecessary to accept such uncertainty, because all modern acceleration sleds utilized by the restraints industry and independent test laboratories use high-precision and high-accuracy linear displacement transducers. By nature of these instruments, the AORC argued that no interpretation or filtering is necessary. According to the AORC, test laboratories use one of two designs to measure

webbing payout: (1) A pinch roller mechanism that acts directly on the webbing, with a transducer at the roller to measure webbing movement, or (2) a displacement transducer on a sled carriage that moves in a linear direction. The AORC suggested that NHTSA should add this information to the Laboratory Test Procedure for FMVSS No. 209.

In response to these comments, NHTSA has decided to make certain modifications in the final rule. We concur with the commenters that, with the development of the A–T corridor, the test procedures should be specific enough to ensure repeatability and reproducibility and that a more detailed data acquisition methodology would help preclude variance among testing laboratories and would improve test objectivity and enforceability. To this end, we have decided to adopt the AORC's recommendation to utilize SAE J211–1 (Dec. 2003 version), which we are incorporating by reference in FMVSS No. 209.

We also agree with the AORC that filtering is not necessary for data related to webbing payout, in light of the direct measurement equipment utilized by the industry. The agency's compliance test laboratories currently utilize high-precision and high-accuracy displacement transducers to directly measure webbing payout, thereby eliminating the need for numeric integration and data filtering. Accordingly, we have eliminated the statement in S5.2(j)(3) of the NPRM which had provided, ''The displacement data shall be processed at Channel Frequency Class 60.''

However, we have decided not to adopt TK Holdings' recommendation that we adopt a ±20 g full-scale accelerometer, because we do not believe that such device is necessary for the present application. The commenter did not provide any supporting data to demonstrate that current ±10 g accelerometers are at a high risk for damage, and the agency is unaware of any accelerometer failures at its compliance test laboratories due to an overshoot in the acceleration pulse. Furthermore, we are concerned that the precision of the pulse up to 0.7 g would be diminished by switching to an accelerometer with a larger range. Accordingly, we have decided to retain the requirement for use of a ±10 g accelerometer.

3. Tolerances

The NPRM proposed to require a tolerance of ±3 degrees for all angles and orientation of the seat belt assemblies and components, unless otherwise specified. (*See* S5.4 of the NPRM.)

On the issue of tolerances, the AORC, TK Holdings, and Ford all concurred that NPRM's proposed angle tolerances should not apply to requirements where a range of angles is specified. However, these commenters argued that the proposed tolerance of ±3 degrees is inappropriate for certain provisions of the standard, because it would necessitate a more sensitive ELR design, in order to compensate for mounting error during testing. The commenters stated that ELR designs with increased sensitivity are likely to be more nuisance-prone. For this reason, the AORC and TK Holdings recommended a tolerance level of ±0.5 degrees for the angles and orientations specifically addressed in the NPRM.

We agree with the commenters that a tolerance level of ±3 degrees for certain angle and orientation requirements might drive nuisance-prone ELR designs. Excessive tolerance, beyond the minimum level that is consistent with the ability of the test equipment, could introduce more error into the test procedure, thereby forcing unwanted compensation in the design of the ELR. Accordingly, we have decided to modify the relevant provisions in S5.2(j)(2) of the final rule to explicitly provide a tolerance level of ±0.5 degrees for all angle and orientation requirements contained in that paragraph. The language of S5.4, ''Tolerance on angles,'' has also been modified to reflect this change.

4. Request for Comments on Specific Issues

As noted above, the NPRM requested responses to several questions regarding the compliance of current ELRs to the proposed A–T corridor and methods that could be employed to accurately determine when ELR lock-up occurs. Each of the questions posed in the NPRM is repeated below, followed by the comments received on that issue, if any.

• The AORC suggested a corridor more narrowly defined at the beginning (*i.e.,* a 0–4 ms window). Would a narrower corridor as suggested by the AORC be feasible? Would a narrower corridor more accurately specify the A–T onset?

The AORC provided another suggested A–T corridor which was broader than the one it originally suggested. Specifically, the AORC extended the bottom portion of the corridor from 0–4 ms to 0–10 ms, in order to accommodate a potential lag in the initiation of the test pulse. However, the AORC's newly recommended corridor was narrower than the one proposed in the NPRM.

• Would any currently compliant emergency-locking retractor be unable to comply under the proposed corridor?

TK Holdings responded by stating that all of its currently compliant ELR seat belt assemblies would comply with the A–T corridor proposed in the NPRM.

• Is 50 ms at the beginning of the time period sufficient to allow for an initial peak above 0.7 g limit?

In response to this question, TK Holdings stated that 50 ms provides sufficient time to reach 0.7 g.

The agency notes that in this final rule, we have modified the lower boundary of the A–T corridor such that the initial peak must be obtained within 40 ms. However, we do not believe that this modification will impact any existing compliant ELR because agency data show that current acceleration pulses reach 0.7 g well before 40 ms.

• ELR lock-up occurs when rotation of the ELR gear assembly stops. The methods employed by test laboratories to determine ELR lock-up are indirect methods rather than direct measurement of the ELR gear. In general, an ELR lock-up occurrence is determined by the observation of a sudden change in sled acceleration-time curve. Thus, the exact time of lock-up is subject to test laboratory's interpretation of this event. We are requesting input on methods that can be employed in our test procedures to accurately determine when ELR lock-up occurs. Your response should include the following:

(a) The type of sensing device and/or test equipment to be employed for detecting lock-up.

(b) Any procedures for performing a lock-up test. Please provide technical support.

(c) Any criteria used to evaluate the lock-up condition. Please provide technical support.

The AORC and TK Holdings both responded to this question by suggesting the use of a threshold load, which they stated is consistent with current industry practice. According to the commenters, a typical set-up includes a belt load sensor in the webbing path between the fixed webbing end and the retractor. They stated that the standard industry practice is to use a 35 Newton (N) ±10 N belt load to indicate that a lock-up has occurred. However, the AORC argued that an additional 3–5 mm of allowable webbing payout is necessary to account for the additional webbing travel between the actual lock-up time and the time it takes to achieve a 35 N load on the webbing.

NHTSA understands that there is currently more than one methodology in use for determining ELR lock-up. Some laboratories use the industry standard (i.e., a 35 N threshold), while others determine lock-up through observation of a sudden change in the A–T curve. In the final rule, we have decided not to specify a required method for determining ELR lock-up for the following reasons. First, the industry load threshold approach is also an indirect measurement of lock-up, and the agency does not have sufficient technical information to assess and adopt that approach. Furthermore, we have not heard of any problems associated with existing methods for determining ELR lock-up.

5. Lead Time

The NPRM proposed to provide affected entities with lead time of one year from the time of publication of a final rule to meet the requirements of the amended standard.

The AORC and TK Holdings requested that the lead time for compliance with the final rule's requirements be extended from 12 months, as proposed, to 18 months. The commenters stated that such additional time is necessary to permit companies to purchase and to install new equipment, if necessary, to ensure compliance with the amended standard.

NHTSA has decided to extend the compliance date with these amendments to FMVSS No. 209 to 18 months after the date of issuance of this final rule, as requested by the commenters. Because we do not anticipate that the changes contained in this final rule would have any significant impact upon the effectiveness or compliance of existing ELRs, we believe that it is appropriate to afford companies additional time to purchase and configure their equipment, if necessary, to comply with the amended standard.

6. Other Issues

Commenters also raised a number of other sundry issues with the NPRM, as discussed below.

The AORC commented that in the proposed regulatory text in S4.3(j)(2), the agency changed certain wording in that paragraph from ''when the retractor is subjected to an acceleration'' to ''after the retractor is subjected to an acceleration.'' In its submission, the AORC argued that this wording change affects the meaning of that provision, and it requested that in the final rule, the agency revert to the original language.

We have decided to adopt the recommendation of the AORC and reintroduce the phrase ''when the retractor is subjected to an acceleration'' at the appropriate place in the final rule. We agree that using the phrase ''after the retractor is subjected to an acceleration'' could be misinterpreted as permitting the retractor to lock up anytime after an acceleration pulse of 0.7 g, something that the agency clearly did not intend. We believe that this modification will correctly capture the relationship between acceleration and ELR lock-up.

Renfroe Engineering commented that there is not any existing minimum acceleration requirement for webbing-sensitive retractors, so long as the assembly complies with the vehicle-sensitive test. It also argued that a range of 1–4 g is necessary to induce lock-up in webbing-sensitive retractors (although the commenter provided no technical data in support of this position). Accordingly, Renfroe Engineering requested that FMVSS No. 209 be amended to require ELRs equipped with dual-sensitive retractors to comply with the standard for both designs.

We believe that Renfroe's request is outside the scope of the present rulemaking. Furthermore, we believe that having two separate lock-up requirements for each assembly would introduce unnecessary duplicity into the standard, because compliance is based on whether or not the ELR locks up at the proper acceleration and webbing payout, regardless of the type of sensor used to accomplish this.

In a similar vein, the AORC raised the issue of ''nuisance locking'' for multi-sensing ELRs. Specifically, the AORC expressed concern about multi-sensing ELRs for which only the vehicle-sensing capability is certified, thereby leaving the webbing-sensing mode unchecked. The AORC stated that the vehicle sensor might engage a lock-up on a multi-sensing ELR when testing for a webbing-sensitive ''no lock'' by a 0.3 g acceleration of the retractor. To remedy this potential problem, the AORC suggested that the regulatory text be amended either by requiring webbing acceleration of 0.3 g for dual-sensing retractors or by providing a related provision in the test procedures. In addition, the AORC stated that on the issue of the requirements for locking of a webbing-sensitive retractor, the webbing of the retractor should be accelerated, rather than the retractor itself.

In a February 19, 1981 letter of interpretation to Mr. Frank Pepe,[11] we stated that dual-sensitive ELRs should be treated as either a vehicle-sensitive retractor or a webbing-sensitive retractor for purposes of the standard. In that letter, the agency explained its intention to require use of either type of retractor. Accordingly, the agency decided to require manufacturers to elect one type of retractor for certification purposes and to conduct testing for only that type of retractor (while voluntarily permitting a different type of retractor). In that interpretation letter, we expressed our belief that this approach would eliminate the apparent conflict that had arisen in the compliance envelopes established in S4.3(j)(1) and (2), given the compliance tolerances built into these dual-sensitive systems. That approach also would not discourage manufacturers from providing the overlapping protection of a dual-sensitive ELR.

As to the issue of whether the webbing or the retractor should be accelerated, the same letter of interpretation points out that paragraph S4.3(j)(2) specifically states that the retractor is to be accelerated, not the belt webbing, because there are inertial forces that react on the retractor during its acceleration that are not present when the webbing alone is accelerated. We believe that this reasoning remains valid, and it is reflected in the regulatory text of this final rule.

The agency has not been receiving complaints regarding ''nuisance locking'' of multi-sensing ELRs, and we do not believe that this issue presents a safety concern in the present fleet. However, if the agency were presented with supporting data to document a genuine problem, we might reconsider our 1981 interpretation.

In its comments, the AORC also argued as to the need for an A–T corridor for the no-lock requirement at an acceleration of no greater than 0.3 g, citing similar reasoning as contained in its petition for the corridor in the 0.7 g lock-up requirement. Specifically, the AORC recommended a corridor with only an upper boundary, with an initial onset rate of 150 g/sec and an upper limit sustained at 0.3 g.

After carefully considering the AORC's comment on this issue, we do not believe that it is necessary to amend the standard to provide an A–T corridor for the no-lock requirement because the existing specification is valid. In the existing standard, the requirement in S4.3(j)(2) states that the retractor shall

[11] *See http://www.nhtsa.dot.gov/cars/rules/interps/gm/81/nht81–1.14.html.*

not lock before the webbing payout extends to the minimum limit of 51 mm when the retractor is subjected to an acceleration no greater than 0.3 g, which is to occur within the first 50 ms and is to be sustained throughout the test. The agency believes that this requirement implicitly provides the appropriate boundary for the acceleration pulse (with a range specified at 0.3 g or less), so there is not any need to explicitly define an acceleration tolerance corridor for the no-lock requirement. We likewise do not believe that it is necessary to limit the onset rate limit to 150 g/sec. If the acceleration pulse meets the existing requirements of the hardware and data acquisition methodology, a no-lock corridor should not be necessary. Furthermore, even if we did agree with the AORC's suggestion in this regard, it would not be appropriate to make this change immediately in the final rule without the opportunity for public comment, because the issue of a no-lock corridor was not raised in either the AORC's original petition or the NPRM.

Public Citizen submitted its report titled, ''Rolling Over on Safety: The Hidden Failures of Belts in Rollover Crashes,'' which documents what that organization perceives to be inadequacies in current safety belt design and performance during rollover events. Although rollover crashes are a topic of significant concern for the agency, our assessment is that the Public Citizen report does not directly address the specific issues in this rulemaking because of the different nature of rollover sensors and seat belt technology such as pretensioners.

V. Benefits and Costs

In preparing its June 3, 2004 proposal, NHTSA did not estimate benefits for this rulemaking because we anticipated that it would not result in substantial changes to the performance of emergency-locking retractors. This assessment has not changed at the final rule stage. These amendments to FMVSS No. 209 more directly affect the test procedure specifications and are intended only to clarify the test specifications.

NHTSA anticipates only a minimal cost burden to vehicle manufacturers from this final rule. Testing laboratories might have to develop new specifications for the instrumentation used to generate the acceleration pulses and may be required to obtain the specified accelerometer. However, NHTSA anticipates that only a small number of businesses will need to purchase new equipment, since the specifications were requested by the AORC in its petition. The members of the AORC constitute the majority of seat belt suppliers in the U.S. Those who would have to purchase new equipment may do so for a one-time, minimal cost to the test laboratory. Furthermore, it is anticipated that all current ELRs will continue to comply with FMVSS No. 209 without change under the final rule's amendments.

VI. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[12] These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.[13] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[14] The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[15] The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.[16]

In developing this final rule to further clarify the test procedures of FMVSS No. 209, *Seat Belt Assemblies*, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301.

First, this final rule arose from a petition for rulemaking brought by the industry association for seat belt assembly manufacturers, which recommended changes for amending the standard to more clearly define requirements and to establish a new test methodology for emergency-locking retractors. This final rule is preceded by an NPRM, which facilitated the efforts of the agency to obtain and consider relevant motor vehicle safety information, as well as public comments. Further, in preparing this document, the agency carefully evaluated available research, testing results, and other information related to various ELR technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the requirements for ELRs are practicable, the agency considered the form and functionality of currently compliant ELRs, consistent with our safety objectives and the statutory requirements. We note that ELRs are already required on light vehicles, and we believe that it will be practicable to adopt the new requirements and test methodology of this final rule without necessitating redesigns on the part of ELR manufacturers. We expect that vehicle manufacturers will continue to have a number of technological choices available for meeting the requirements of the FMVSS No. 209 for ELRs. In sum, we believe that this final rule is practicable and will provide greater clarity in terms of the test procedures for ELRs.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, the final rule sets forth performance requirements for operation of the ELR, including the circumstances under which the ELR must lock. The final rule also includes revised test requirements for ELRs, including establishment of a new acceleration-time corridor, provision of a tolerance for angle measurements, and adoption of the same instrumentation specifications currently found in other FMVSSs containing crash tests. The standard's test procedures carefully delineate how testing will be conducted. Thus, the agency believes that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of FMVSS No. 209.

Fourth, we believe that this final rule will meet the need for motor vehicle safety because the standard will better define the acceleration pulse that will be utilized in testing ELRs, mechanisms which serve the critical function of ensuring that seat belts are properly locked up in the event of sudden deceleration or a crash.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the agency is addressing the petitioner's concern that to better define the ELR requirements and test procedures, actions which we do not expect will increase the present stringency of the standard or cause

[12] 49 U.S.C. 30111(a).

[13] 49 U.S.C. 30102(a)(9).

[14] 49 U.S.C. 30111(b).

[15] Id.

[16] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

compliance problems for existing ELRs. Accordingly, we believe that this final rule is appropriate for the seat belt assemblies in covered vehicles that are subject to these provisions of FMVSS No. 209 because it furthers the agency's objective of preventing deaths and serious injuries by ensuring that ELRs in seat belts function properly.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to OMB review and to the requirements of the Executive Order. 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 or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866. The rule is not considered to be significant within the meaning of E.O. 12866 or the Department of Transportation's Regulatory Policies and Procedures (44 FR 11034 (Feb. 26, 1979)). As stated above in Section V, *Benefits and Costs*, this final rule is not expected to require substantial changes in performance of emergency-locking retractors. Testing laboratories might need to develop new specifications for the instrumentation used to generate the acceleration pulses, but it is not expected to result in more than a minimal cost burden for manufacturers.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule would not have a significant economic impact on a substantial number of small entities. The rationale for this certification is as follows. The final rule is expected to directly affect motor vehicle manufacturers, manufacturers of seat belt assemblies, and test laboratories. North American Industrial Classification System (NAICS) code numbers 336111, *Automobile Manufacturing*, and 336112, *Light Truck and Utility Vehicle Manufacturing*, prescribe a small business size standard of 1,000 or fewer employees. NAICS code No. 336399, *All Other Motor Vehicle Parts Manufacturing*, prescribes a small business size standard of 750 or fewer employees.

Most vehicle manufacturers would not qualify as a small business, and we understand that currently there are only four small motor vehicle manufacturers (*i.e.*, only four with fewer than 1,000 employees) in the United States that will have to comply with this final rule. These manufacturers are expected to rely on suppliers to provide the seat belt assembly hardware, and then they would integrate it into their vehicles.

In addition, we note that this final rule has been promulgated in response to a petition for rulemaking from the AORC, which represents U.S. manufacturers of seat belt assemblies. The agency does not anticipate manufacturers of seat belt assemblies having any difficulty in complying with the final rule. The final rule might make it necessary for testing laboratories to develop new specifications for the instrumentation used to generate and record the acceleration pulses. We anticipate that this would result in only a minimal burden to seat belt manufacturers and vehicle manufacturers. Since test laboratories already have the instrumentation necessary to record the A-T response for compliance testing, we estimate the maximum, one-time cost to laboratories to be less than $500. This cost would be for the purchase of an instrument-grade, high-accuracy ±10 g accelerometer. In conclusion, the agency believes that this final rule will not have a significant economic impact upon a substantial number of small businesses.

D. Executive Order 13132 (Federalism)

Executive Order 13132, ''Federalism'' (64 FR 43255, August 10, 1999), requires NHTSA 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'' are 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 Executive Order 13132, the agency may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. NHTSA also may not issue a regulation with federalism implications and that preempts a State law unless the agency consults with State and local officials early in the process of developing the regulation.

NHTSA has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule does not have sufficient Federalism implications to warrant consultations with State and local officials or the preparation of a Federalism summary impact statement. This final rule is not expected to have any substantial effects on the States, or on the current distribution of power and responsibilities among the various local officials.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996), the agency has considered whether this rulemaking would have any retroactive effect. This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

F. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, 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 the agency 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action under Executive Order 12866 and because it does not involve decisions based on environmental, health, or safety risks that disproportionately affect children.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not contain any collection of information requirements requiring review under the PRA.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is 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, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards. The NTTAA does not apply to symbols.

The amendments adopted in this final rule incorporate voluntary consensus standards adopted by the Society of Automotive Engineers. Accordingly, this final rule is in compliance with Section 12(d) of the NTTAA.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995 (so currently about $112 million in 2001 dollars)). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector in excess of $112 million annually.

J. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

K. Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use)

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 18, 2001) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significantly adverse effect on the supply of, distribution of, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. This final rule, which amends the acceptable pulse corridor for demonstrating compliance with the seat belt emergency-locking retractor specifications and incorporates SAE measurement procedures, is neither an economically significant rulemaking nor one likely to have a significant energy impact. Therefore, this final rule was not analyzed under E.O. 13211.

L. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulatory identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

M. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review 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 in 49 CFR Parts 571

Imports, Incorporation by Reference, Motor vehicle safety, Motor vehicles, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.209 is amended by:
■ a. Revising S4.1(a) and (b), S4.3(j), and S5.2(j);
■ b. Adding S5.4; and
■ c. Adding Figure 8 after Figure 7 of § 571.209.

The revised and added sections read as follows:

§ 571.209 Standard No. 209; Seat belt assemblies.

* * * * *

S4 *Requirements.*

S4.1(a) *Incorporation by reference.* SAE Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' is incorporated by reference in S5.2(j) and is hereby made part of this Standard. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of SAE Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation'' may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at the National Highway Traffic Safety Administration, Technical Information Services, 400 Seventh Street, SW., Plaza Level, Room 403, Washington, DC 20590, 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) *Single occupancy.* A seat belt assembly shall be designed for use by one, and only one, person at any one time.

* * * * *

S4.3 *Requirements for hardware.*

* * * * *

(j) *Emergency-locking retractor.*

(1) *For seat belt assemblies manufactured before February 22, 2007.* Except for manufacturers that, at the manufacturer's option, voluntarily choose to comply with S4.3(j)(2) during this period (with said option irrevocably selected prior to, or at the time of, certification of the seat belt assembly), an emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)(1)—

(i) Shall lock before the webbing extends 25 mm when the retractor is subjected to an acceleration of 7 m/s^2 (0.7 g);

(ii) Shall not lock, if the retractor is sensitive to webbing withdrawal, before the webbing extends 51 mm when the retractor is subjected to an acceleration of 3 m/s^2 (0.3 g) or less;

(iii) Shall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15° or less from its orientation in the vehicle;

(iv) Shall exert a retractive force of at least 3 N under zero acceleration when attached only to the pelvic restraint;

(v) Shall exert a retractive force of not less than 1 N and not more than 5 N under zero acceleration when attached only to an upper torso restraint;

(vi) Shall exert a retractive force not less than 1 N and not more than 7 N under zero acceleration when attached to a strap or webbing that restrains both the upper torso and the pelvis.

(2) *For seat belt assemblies manufactured on or after February 22, 2007 and for manufacturers opting for early compliance.* An emergency-locking retractor of a Type 1 or Type 2 seat belt assembly, when tested in accordance with the procedures specified in paragraph S5.2(j)(2)—

(i) Shall under zero acceleration loading—

(A) Exert a retractive force of not less than 1 N and not more than 7 N when attached to a strap or webbing that restrains both the upper torso and the pelvis;

(B) Exert a retractive force not less than 3 N when attached only to the pelvic restraint; and

(C) Exert a retractive force of not less than 1 N and not more than 5 N when attached only to an upper torso restraint.

(D) For a retractor sensitive to vehicle acceleration, lock when tilted at any angle greater than 45 degrees from the angle at which it is installed in the vehicle or meet the requirements of S4.3(j)(2)(ii).

(E) For a retractor sensitive to vehicle acceleration, not lock when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle.

(ii) Shall lock before the webbing payout exceeds the maximum limit of 25 mm when the retractor is subjected to an acceleration of 0.7 g under the applicable test conditions of S5.2(j)(2)(iii)(A) or (B).

(iii) For a retractor sensitive to webbing withdrawal, shall not lock before the webbing payout extends to the minimum limit of 51 mm when the retractor is subjected to an acceleration no greater than 0.3 g under the test condition of S5.2(j)(2)(iii)(C).

* * * * *

S5.2 *Hardware.*

* * * * *

(j) *Emergency-locking retractor.*

(1) *For seat belt assemblies manufactured before February 22, 2007.* Except for manufacturers that elect to comply with S4.3(j)(2) and the corresponding test procedures of S5.2(j)(2), a retractor shall be tested in a manner that permits the retraction force to be determined exclusive of the gravitational forces on hardware or webbing being retracted. The webbing shall be fully extended from the retractor, passing over or through any hardware or other material specified in the installation instructions. While the webbing is being retracted, the lowest force of retraction within ±51 mm of 75 percent extension shall be determined. A retractor that is sensitive to webbing withdrawal shall be subjected to an acceleration of 3 m/s^2 (0.3 g) within a period of 50 milliseconds (ms) while the webbing is at 75 percent extension, to determine compliance with S4.3(j)(1)(ii). The retractor shall be subjected to an acceleration of 7 m/s^2 (0.7 g) within a period of 50 ms, while the webbing is at 75 percent extension, and the webbing movement before locking shall be measured under the following conditions: For a retractor sensitive to webbing withdrawal, the retractor shall be accelerated in the direction of webbing retraction while the retractor drum's central axis is oriented horizontally and at angles of 45°, 90°, 135°, and 180° to the horizontal plane. For a retractor sensitive to vehicle acceleration, the retractor shall be:

(i) Accelerated in the horizontal plane in two directions normal to each other, while the retractor drum's central axis is oriented at the angle at which it is installed in the vehicle; and

(ii) Accelerated in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45°, 90°, 135°, and 180° from the angle at which it is installed in the vehicle, unless the retractor locks by gravitational force when tilted in any

direction to any angle greater than 45° from the angle at which it is installed in the vehicle.

(2) *For seat belt assemblies manufactured on or after February 22, 2007 and for manufacturers opting for early compliance.* A retractor shall be tested in a manner that permits the retraction force to be determined exclusive of the gravitational forces on the hardware or webbing being retracted.

(i) Retraction force: The webbing shall be extended fully from the retractor, passing over and through any hardware or other material specified in the installation instructions. While the webbing is being retracted, measure the lowest force of retraction within ±51 mm of 75 percent extension.

(ii) Gravitational locking: For a retractor sensitive to vehicle acceleration, rotate the retractor in any direction to an angle greater than 45 degrees from the angle at which it is installed in the vehicle. Apply a force to the webbing greater than the minimum force measured in S5.2(j)(2)(i) to determine compliance with S4.3(j)(2)(i)(D).

(iii) Dynamic tests: Each acceleration pulse shall be recorded using an accelerometer having a full scale range of ±10 g and processed according to the practices set forth in SAE Recommended Practice J211–1 rev. December 2003, ''Instrumentation for Impact Test—Part 1—Electronic Instrumentation,'' Channel Frequency Class 60. The webbing shall be positioned at 75 percent extension, and the displacement shall be measured using a displacement transducer. For tests specified in S5.2(j)(2)(iii)(A) and (B), the 0.7 g acceleration pulse shall be within the acceleration-time corridor shown in Figure 8 of this standard.

(A) For a retractor sensitive to vehicle acceleration—

(*1*) The retractor drum's central axis shall be oriented at the angle at which it is installed in the vehicle ±0.5 degrees. Accelerate the retractor in the horizontal plane in two directions normal to each other and measure the webbing payout; and

(*2*) If the retractor does not meet the 45-degree tilt-lock requirement of S4.3(j)(2)(i)(D), accelerate the retractor in three directions normal to each other while the retractor drum's central axis is oriented at angles of 45, 90, 135, and 180 degrees ±0.5 degrees from the angle at which it is installed in the vehicle and measure webbing payout.

(B) For a retractor sensitive to webbing withdrawal—

(*1*) The retractor drum's central axis shall be oriented horizontally ±0.5 degrees. Accelerate the retractor in the direction of webbing retraction and measure webbing payout; and

(*2*) The retractor drum's central axis shall be oriented at angles of 45, 90, 135, and 180 degrees ±0.5 degrees to the horizontal plane. Accelerate the retractor in the direction of the webbing retraction and measure the webbing payout.

(C) A retractor that is sensitive to webbing withdrawal shall be subjected to an acceleration no greater than 0.3 g occurring within a period of the first 50 ms and sustaining an acceleration no greater than 0.3 g throughout the test, while the webbing is at 75 percent extension. Measure the webbing payout.

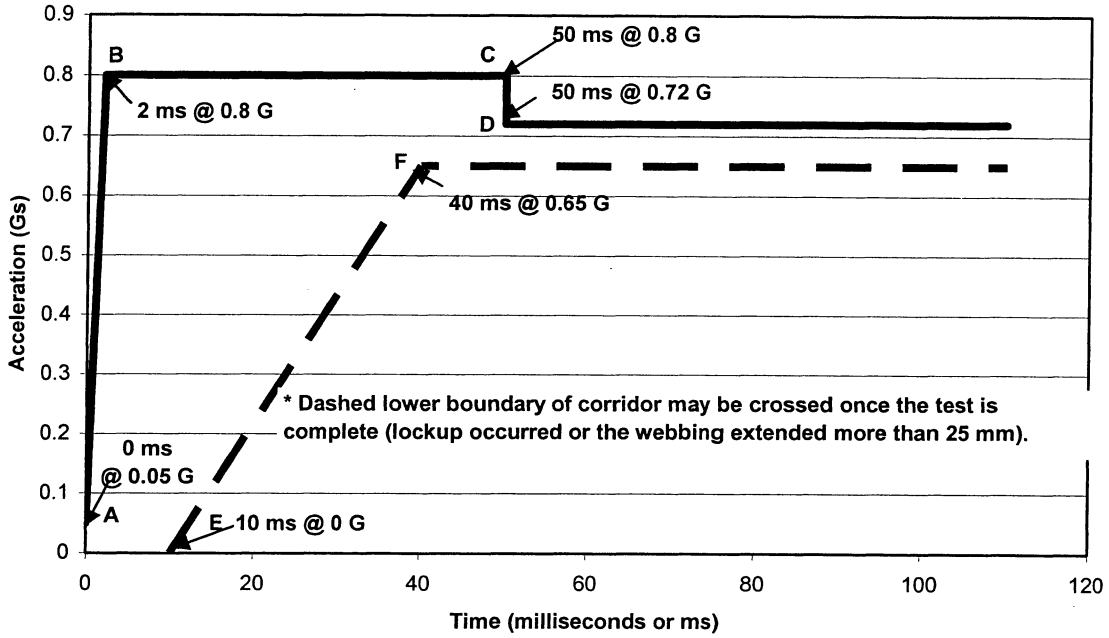
* * * * *

S5.4 *Tolerances on angles.* Unless a range of angles is specified or a tolerance is otherwise explicitly provided, all angles and orientations of seat belt assemblies and components specified in this standard shall have a tolerance of ±3 degrees.

* * * * *

BILLING CODE 4910–59–P

Figure 8: Acceleration Corridors



Reference Point	Time (ms)	Acceleration (g)
A	0	0.05
B	2	0.8
C	50	0.8
D	50	0.72
E	10	0
F	40	0.65

Issued: August 12, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–16524 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT54

Endangered and Threatened Wildlife and Plants; Correction of Special Rule to Control the Trade of Threatened Beluga Sturgeon (*Huso huso*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are correcting a special rule promulgated under Section 4(d) of the Endangered Species Act of 1973, as amended (Act), to exempt the import and export of, and foreign and interstate commerce in, certain products of beluga sturgeon (*Huso huso*) from the permit requirements under 50 CFR 17.32. These corrections are not substantive.

DATES: This rule is effective March 4, 2005.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority, at the above address (phone: 703–358–1708). For permitting information, contact: Tim Van Norman, Chief, Branch of Permits—International, at the address above (phone: 703–358–2104, or toll free, 1–800–358–2104).

SUPPLEMENTARY INFORMATION: On March 4, 2005, we, the U.S. Fish and Wildlife Service (Service), promulgated a special rule (70 FR 10493) under Section 4(d) of the Endangered Species Act of 1973, as amended (Act), to exempt the import and export of, and foreign and interstate commerce in, certain products of beluga sturgeon (*Huso huso*) from the permit requirements in 50 CFR 17.32 regarding the importation of threatened species. Errors were introduced into the regulatory text of the rule. We correct these errors now for the purpose of reinstating clarity. None of these changes are substantive.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Export, Import, Reporting and recordkeeping requirements, Transportation.

Regulation Correction

■ For reasons set forth in the preamble, we correct 50 CFR 17.44 by making the following correcting amendments:

PART 17—[CORRECTED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.44 as follows:

■ a. In paragraph (y)(2)(i) in the first sentence, remove the word ''paragraph'' and add the word ''paragraphs'' in its place.

■ b. In paragraph (y)(2)(ii) in the first sentence, remove the word ''paragraphs'' and add the word ''paragraph'' in its place and add a comma after the word ''re-export'' the second time it appears.

■ c. In paragraph (y)(3)(i) in the sentence following the introductory sentence, add the words ''of this section'' before the closing parenthesis at the end of the sentence.

■ d. In paragraph (y)(3)(i)(A) at the beginning of the first sentence, remove the word ''Any'' and add the words ''Except for caviar contained in cosmetics, any'' in its place.

■ e. In paragraph (y)(3)(ii)(B)(2) remove the words ''through (E)'' and add the words ''and (D)'' in its place.

■ f. In paragraph (y)(4)(i) in the heading, italicize the words ''Basin-wide''.

■ g. In paragraph (y)(4)(ii) in the second sentence, remove the words ''basin-wide management plans'' and add the words ''national laws and regulations'' in their place.

■ h. In paragraph (y)(4)(iii) in the second sentence, remove the words ''Service (see **FOR FURTHER INFORMATION CONTACT** above)'' and add the words ''Division of Management Authority, Branch of Permits'International, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203'' in their place.

■ i. In paragraph (y)(5) introductory text, revise the last sentence as set forth below.

■ j. In paragraph (y)(5)(iv) in the first sentence, remove the word ''this'' before the word ''paragraph'' and add the words ''(y)(5) of this section'' after the word ''paragraph'', and in the last sentence, remove the words ''paragraphs (y)(6) and'' and add the word ''paragraph'' in their place.

■ k. In paragraph (y)(6) in the sentence following the introductory sentence, remove the words ''through (iii)'' and add the words ''or (ii)'' in their place.

■ l. In paragraph (y)(7) in the first sentence following the introductory sentence, remove the words ''and paragraph (y)(5) for aquaculture facilities)'' and add the words ''and, for aquaculture facilities, as per paragraph (y)(5)(iv) of this section)'' in their place.

■ m. In paragraph (y)(7)(i), remove the word ''may'' and add the word ''will'' in its place.

■ n. In paragraph (y)(7)(i)(A), remove the word ''above'' and add the words ''in paragraph (y)(4) of this section'' in its place.

■ o. In paragraph (y)(7)(i)(J), revise the text as set forth below.

§ 17.44 Special rules—fishes.

* * * * *

(y) * * *

(5) * * * Facilities outside the littoral states wishing to obtain such exemptions must submit a written request to the Division of Management Authority, Branch of Permits—International, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203, and provide to the Service's Division of Scientific Authority, in Room 750 at the same address, information that shows, at a minimum, all of the following:

* * * * *

(7) * * *

(i) * * *

(J) An aquaculture facility outside the littoral states has been issued a programmatic exemption from threatened species permits under paragraph (y)(5) of this section, but is not abiding by the provisions of paragraphs (y)(5)(i) through (iii) of this section, or, based on the biennial reports required under paragraph (y)(5) of this section, has not actively cooperated with one or more littoral states in a meaningful way to support beluga sturgeon conservation.

* * * * *

Dated: August 4, 2005.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–16569 Filed 8–19–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040830250–5109–04; I.D. 081605C]

RIN 0648–AS27

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Pacific Whiting Primary Season for the Shore-based Sector and the Resumption of Trip Limits

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

ACTION: Temporary rule; fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 2005 primary season for the Pacific whiting (whiting) shore-based sector at 2100 local time (l.t.) August 18, 2005, because the allocation is projected to be reached. This action is intended to keep the harvest of whiting at the 2005 allocation levels.

DATES: Effective from 2100 l.t. August 18, 2005, until January 1, 2006. Comments will be accepted through September 6, 2005.

ADDRESSES: You may submit comments, identified by I.D. 0081605C, by any of the following methods:

• E-mail: *WhitingSBclosure.nwr@noaa.gov*. Include I.D. 081605C in the subject line of the message.

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

• Fax: 206–526–6736, Attn: Becky Renko.

• Mail: D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko at 206–526–6110.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California.

The regulations at 50 CFR 660.323(a) establish separate allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. For 2005, the 232,069 mt commercial harvest guideline for whiting is divided with the catcher/

processor sector receiving 78,903 mt (34 percent); the mothership sector receiving 55,696 mt (24 percent); and the shore-based sector receiving 97,469 mt (42 percent).

Regulations at 50 CFR 660.373(b) describe the primary season for each sector. The primary season for the shore-based sector is the period(s) when the large-scale target fishery is conducted, and when ''per trip'' limits are not in effect. Before and after the primary season, per-trip limits are in effect for whiting.

The best available information on August 16, 2005, indicates that 89,406 mt had been taken through August 14, 2005, and that the 97,469 mt shore-based allocation will be reached by 2100 l.t. August 18, 2005. This **Federal Register** document announces that the primary season for the shore-based sector ends on August 18, 2005, and a 10,000–lb (4,536 kg) trip limit is imposed as of August 18, 2005. Per-trip limits are for vessels using large or small footrope trawl gear and are intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries. To minimize incidental catch of Chinook salmon by vessels fishing shoreward of the 100 fm (183 m) contour in the Eureka area, at any time during a fishing trip, a limit of 10,000–lb (4,536 kg) of whiting is in effect year-round, except when landings of whiting are prohibited.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(b)(3), NMFS herein announces:

Effective 2100 l.t. August 18, 2005, no more than 10,000–lb (4,536 kg) of whiting may be taken and retained, possessed or landed by any vessel participating in the shore-based sector of the whiting fishery, unless otherwise announced in the **Federal Register**. If a vessel fishes shoreward of the 100 fm (183 m) contour in the Eureka area (43° - 40°30′ N. lat.) at any time during a fishing trip, the 10,000–lb (4,536–kg) trip limit applies, as announced in the annual management measures at paragraph IV, B (3)(c)(ii), except when the whiting fishery is closed.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The Assistant Administrator for fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity would be impracticable. It would be impracticable because if this closure were delayed in order to provide notice and comment, the fishery would be expected to greatly exceed the sector allocation. This would either result in the entire whiting optimum yield being exceeded, or in the allocations for the other sectors being reduced. Therefore, good cause also exists to waive the 30-day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3). The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(b)(3) and is exempt from review under Executive Order 12866.

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

Dated: August 16, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–16608 Filed 8–17–05; 2:42 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 161
Monday, August 22, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AK91

Prevailing Rate Systems; Redefinition of the Adams-Denver, CO; Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would remove Adams County, CO, from the Adams-Denver, CO, Federal Wage System (FWS) nonappropriated fund (NAF) wage area and redefine Arapahoe County, CO, from the area of application to the survey area. In addition, we propose to change the name of the Adams-Denver FWS NAF wage area to Arapahoe-Denver. These changes are necessary because the closure of Fitzsimons Army Medical Center in Adams County left the Adams-Denver survey area without a host activity to conduct local NAF wage surveys.

DATES: We must receive comments on or before September 21, 2005.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415–8200; e-mail *pay-performance-policy@opm.gov;* or fax: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-performance-policy@opm.gov;* or fax: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Adams-Denver, CO, Federal Wage System (FWS) nonappropriated fund (NAF) wage area is presently composed of two survey area counties, Adams and Denver Counties, CO, and two area of application counties, Arapahoe and Mesa Counties, CO. The Department of Defense (DOD) requested that the Office of Personnel Management (OPM) remove Adams County from the wage area, redefine Arapahoe County as part of the survey area, and change the Adams-Denver wage area's name to Arapahoe-Denver. These changes are necessary because the closure of Fitzsimons Army Medical Center in Adams County left the Adams-Denver survey area without an activity having the capability to conduct a local wage survey.

The closure of Fitzsimons Army Medical Center left Adams County with no FWS NAF employment. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas ''shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed.'' Therefore, Adams County should not be defined as part of an NAF wage area.

Under 5 CFR 532.219, OPM may establish an NAF wage area when a minimum of 26 NAF wage employees are employed in a survey area, a local activity has the capability to host annual local wage surveys, and sufficient private employment exists within the survey area to provide adequate data for establishing an NAF wage schedule. While the remaining survey county, Denver County, has the overall population and private industry employment to support a survey, it does not have sufficient FWS NAF employment to qualify as a survey area or an activity with the capability to host annual local wage surveys. Therefore, Denver County cannot be defined as the sole survey county for the wage area.

After the closure of Fitzsimons Army Medical Center, the Army and Air Force Exchange Service (AAFES) Denver Exchange was relocated to Buckley Air Force Base (AFB) in Arapahoe County. There are 37 FWS NAF employees working in Arapahoe County, and Buckley AFB has the capability to conduct a local wage survey. DOD has requested that Arapahoe County be defined as part of the survey area. By adding Arapahoe County to the survey area, the wage area continues to meet OPM's regulatory criteria to be a separate NAF wage area. There are about 58 FWS NAF employees working in the survey area, and the area has a local activity, Buckley AFB, with the capability to conduct a local wage survey. Arapahoe and Denver Counties also meet the regulatory requirement of having a minimum of 1,800 private enterprise employees in establishments within the survey specifications. The name of the wage area would be Arapahoe-Denver, CO. The Arapahoe-Denver wage area would consist of two survey counties, Arapahoe and Denver Counties, CO, and one area of application county, Mesa County, CO.

These changes would be effective for the next full-scale wage survey in the Arapahoe-Denver wage area, which is scheduled to begin in January 2006.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Linda M. Springer,

Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix D to subpart B, the wage area listing for the State of Colorado is amended by revising the listing for Adams-Denver to read as follows:

Appendix D to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

COLORADO

Arapahoe-Denver

Survey Area

Colorado:
Arapahoe
Denver

Area of Application. Survey area plus:

Colorado:
Mesa

* * * * *

[FR Doc. 05–16593 Filed 8–19–05; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV05–916–3 PR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2005–06 and subsequent fiscal periods from $0.195 and $0.19, respectively, to $0.20 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders that regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period runs from March 1 through the last day of February. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 1, 2005.

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

FOR FURTHER INFORMATION CONTACT: Laurel May, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as proposed herein would be applicable to all assessable nectarines and peaches beginning on March 1, 2005, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule would increase the assessment rate established for the Nectarine Administrative Committee (NAC) for the 2005–06 and subsequent fiscal periods from $0.195 to $0.20 per 25-pound container or container equivalent of nectarines. This rule would also increase the assessment rate established for the Peach Commodity Committee (PCC) for the 2005–06 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

The NAC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.195 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on April 28, 2005, and discussed and unanimously recommended 2005–06 expenditures and an assessment rate of $0.20 per 25-pound container or container equivalent of nectarines. Subsequently, the NAC revised its budget recommendation because it anticipated higher administrative overhead expenses than it had forecast earlier. In a mail vote completed on June 28, 2005, the NAC

unanimously recommended 2005–06 expenditures of $4,919,049. In comparison, the budgeted expenditures for 2004–05 were $5,162,866. The assessment rate of $0.20 is $0.005 higher than the rate currently in effect.

The rate increase was recommended to ensure that the NAC could meet its 2005–06 anticipated expenses and carry over a financial reserve that would provide adequate funds for promotional and other activities at the beginning of the 2006 season before assessment collections begin. Increasing the assessment rate from $0.195 to $0.20 per 25-pound container is expected to provide about $103,410 in additional assessment revenue, and would allow the NAC to start the 2006 season with about $342,347.

Expenditures recommended by the NAC for the 2005–06 fiscal period include $899,288 for administration, $1,167,381 for inspection, $203,230 for research, and $2,649,149 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were $538,770 for administration, $1,153,676 for inspection, $308,568 for research, and $3,161,852 for domestic and international promotion.

The 2004–05 and 2005–06 budgeted expenses differ significantly because some individual line items have been moved to different expense categories for 2005–2006. However, NAC expenses are generally expected to be lower during the 2005–06 fiscal year compared to the 2004–05 fiscal year.

The 2005–06 NAC assessment rate was derived after considering anticipated fiscal year expenses; the estimated assessable nectarines of 22,004,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2006 season. The committee desires to maintain a financial reserve of approximately $340,000 to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the NAC recommended an assessment rate of $0.20 per 25-pound containers or container equivalent. According to the committee, that assessment rate would result in an adequate financial reserve, yet one well within the maximum of approximately one year's expenses permitted by the order (§ 916.42).

PCC Assessment and Expenses

The PCC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.19 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The PCC met on April 28, 2005, and discussed and unanimously recommended 2005–06 expenditures and an assessment rate of $0.20 per 25-pound container or container equivalent of peaches. Subsequently, the PCC revised its budget recommendation because it anticipated higher administrative overhead expenses than it had forecast earlier. In a mail vote completed on June 28, 2005, the PCC unanimously recommended 2005–06 expenditures of $5,095,709. In comparison, last year's budgeted expenditures were $5,178,003. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The rate increase was recommended to ensure that the PCC could meet its 2005–06 anticipated expenses and carry over a financial reserve that would provide adequate funds for promotional and other activities at the beginning of the 2006 season before assessment collections begin. Increasing the assessment rate from $0.19 to $0.20 per 25-pound container is expected to provide about $211,800 in additional assessment revenue, and would allow the PCC to start the 2006 season with about $418,201.

Expenditures recommended by the PCC for the 2005–06 fiscal period include $918,736 for administration, $1,260,160 for inspection, $204,833 for research, and $2,711,980 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were $540,456 for administration, $1,240,520 for inspection, $208,570 for research, and $3,188,457 for domestic and international promotion.

The 2004–05 and 2005–06 budgeted expenses differ because some individual line items have been moved to different expense categories for 2005–2006. However, the PCC expenses are generally expected to be lower during the 2005–06 fiscal year compared to the 2004–05 fiscal year.

The 2005–06 PCC assessment rate was derived after considering anticipated PCC expenses; the estimated assessable peaches of 21,180,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate reserve to carry the PCC into the 2006 season. The committee desires to maintain a financial reserve of approximately $420,000 to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the PCC recommended an assessment rate of $0.20 per 25-pound container or container equivalent. According to the committee, that assessment rate would result in an adequate financial reserve, yet one well within the maximum of approximately one year's expenses permitted by the order (§ 917.38).

Continuance of Assessment Rates

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committees or other available information.

Although these assessment rates would be in effect for an indefinite period, the committees would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of committee meetings are available from the committees' Web site or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking would be undertaken as necessary. The committee's 2005–06 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 210 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,500 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the

Small Business Administration [13 CFR 121.201] as those whose annual receipts are less than $6,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2004 season, the committees' staff estimated that the average handler price received was $8.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 750,000 containers to have annual receipts of $6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2004 season, the committees' staff estimates that small handlers represent approximately 87 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 20 percent of the producers in the industry could be defined as other than small entities. For the 2004 season, the committees' estimated the average producer price received was $5.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 150,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2004 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of $5.00 per container or container equivalent, and a combined packout of nectarines and peaches of 40,438,536 containers, the value of the 2004 packout is estimated to be $202,192,680. Dividing this total estimated grower revenue figure by the estimated number of producers (1,500) yields an estimate of average revenue per producer of about $134,795 from the sales of peaches and nectarines.

This rule would increase the assessment rates established for the NAC for the 2005–06 and subsequent fiscal periods from $0.195 to $0.20 per 25-pound container or container equivalent of nectarines and for the PCC for the 2005–06 and subsequent fiscal periods from $0.19 to $0.20 per 25-pound container or container equivalent of peaches.

The NAC recommended 2005–06 fiscal period expenditures of $4,919,049 for nectarines and an assessment rate of $0.20 per 25-pound container or container equivalent of nectarines. The proposed assessment rate of $0.20 is $0.005 higher than the current rate. The PCC recommended 2005–06 fiscal period expenditures of $5,095,709 for peaches and an assessments rate of $0.20 per 25-pound container or container equivalent of peaches. The proposed assessment rate of $0.20 is $0.01 higher than the current rate.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2005–06 fiscal period is estimated at 20,682,000 25-pound container or container equivalents. Thus, the $0.20 rate should provide $4,136,400 in assessment income. Income derived from handler assessments, along with interest income, research grants, and funds from the committee's reserve, would be adequate to cover budgeted expenses and maintain their desired reserve.

The major expenditures recommended by the NAC for the 2005–06 year include 899,288 for administration, $1,167,381 for inspection, $203,230 for research, and $2,649,149 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were $538,770, $1,050,000, $138,018, and $2,574,160, respectively.

The NAC recommended an increase in the assessment rate to meet anticipated 2005–06 expenses and preserve an acceptable financial reserve. A reserve of approximately $340,000 is needed to fund expenses for the following year until assessments for that year are received. The NAC reviewed and recommended 2005–06 expenditures of $4,919,049 and the increased assessment rate.

Analysis of PCC Budget

The quantity of assessable peaches for the 2005–06 fiscal year is estimated at 21,180,000 25-pound container or container equivalents. Thus, the $0.20 rate should provide $4,236,000 in assessment income. Income derived from handler assessments, along with interest income, research grants, and funds from the committee's reserves would be adequate to cover budgeted expenses and maintain their desired reserve.

The major expenditures recommended by the PCC for the 2005–06 year include $918,736 for administration, $1,260,160 for inspection, $204,833 for research, and $2,711,980 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were $540,456, $1,240,520, $208,570, and $3,188,457, respectively.

The PCC recommended an increase in the assessment rate to meet anticipated 2005–06 expenses and preserve an acceptable financial reserve. A reserve of approximately $420,000 is needed to fund expenses for the following year until assessments for that year are received. The PCC reviewed and recommended 2005–06 expenditures of $5,095,709 and the increased assessment rate.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: the Executive Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, and the Domestic Promotion Subcommittee.

Each of the committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income and research grants, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.20 per 25-pound container or container equivalent would allow it to meet its 2005–06 expenses and carry over an operating reserve of approximately $342,000, which is in line with the committee's financial needs. The PCC decided that an assessment rate of $0.20 per 25-pound container or container equivalent would allow it to meet its 2003–04 expenses and carry over an operating reserve of approximately $420,000, which is in line with the committee's financial needs. The committees then unanimously recommended these rates to USDA

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2005–06 season could range between $4.00 and $6.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2005–06 fiscal period as a percentage of total grower revenue could range between 3.33 and 5.0 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation

of the marketing orders. In addition, the committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the April 28, 2004, meetings were public meetings and all entities of all sizes were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

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

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

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because: (1) The 2005–06 fiscal period began on March 1, 2005, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committees at public meetings and unanimously recommended by a mail vote, and is similar to other assessment rate actions issued in past years.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2005, an assessment rate of $0.20 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—PEACHES GROWN IN CALIFORNIA

3. Section 917.258 is revised to read as follows:

§ 917.258 Assessment rate.

On and after March 1, 2005, an assessment rate of $0.20 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 17, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–16572 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 948

[Docket No. FV05–948–1 PR]

Irish Potatoes Grown in Colorado; Reopening of Comment Period on Relaxation of Handling Regulation for Area No. 2 and Certain Imported Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening of comment period.

SUMMARY: Notice is hereby given that the comment period on the proposed relaxation of minimum grade requirements for Colorado Area No. 2 potatoes under Marketing Order No. 948 (order), and for imported red-skinned round type potatoes under the potato import regulation is reopened until September 12, 2005.

DATES: Comments must be received by September 12, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: *moab.docketclerk@usda.gov,* or Internet: *http://www.regulations.gov.* All comments should reference the docket number and the date and page number of this issue and the May 6, 2005, issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 3, 2005, and published in the **Federal Register** on May 6, 2005 (70 FR 23942). The proposed rule would relax the minimum grade requirements from U.S. No. 1 to U.S. Commercial for all Colorado Area No. 2 potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. Under the potato import regulation, the grade changes would only apply to all red-skinned round type imported potatoes of the same size categories during the months of October through June.

Reopening of the comment period was requested on behalf of domestic potato growers by a potato shipper in Pennsylvania. This shipper expressed concern that the relaxation of minimum grade requirements for potatoes imported from Canada could negatively impact potato producers in the United States.

After reviewing the request, USDA is reopening the comment period for 20

additional days. This will provide interested persons more time to review the proposed rule, perform a more complete analysis, and prepare information in writing to support their comments.

Accordingly, the period in which to file written comments is reopened until September 12, 2005. This notice is issued pursuant to the Agricultural Marketing Agreement Act of 1937.

Authority: 7 U.S.C. 601–674.

Dated: August 17, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–16570 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, and 727–100C Series 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 Boeing Model 727–100 and –100C series airplanes, that would have required repetitive inspections of the frame inner chord, outer chord, and web of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout, and corrective action if necessary. This new action revises the proposed rule by adding high frequency eddy current inspections and a detailed inspection for cracks of certain areas described above. This new action also removes one airplane from the applicability. The actions specified by this new proposed AD are intended to detect and correct fatigue cracking of the forward and aft edge frames of the lower lobe FCD cutout, which could result in the loss of the FCD and rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 16, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–238–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. 2003–NM–238–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, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

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 2003–NM–238–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of Notices of Proposed Rulemaking (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. 2003–NM–238–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 Boeing Model 727–100 and –100C series airplanes, was published as an NPRM in the **Federal Register** on June 23, 2004 (69 FR 34974). That NPRM would have required repetitive inspections of the frame inner chord, outer chord, and web of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout, and corrective action, if necessary. That NPRM was prompted by reports indicating that fatigue cracks were found at the inner chord, outer chord, and web of the forward and aft edge frames of the lower lobe FCD cutout. That condition, if not corrected, could result in the loss of the FCD and rapid decompression of the airplane.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, Boeing has issued Alert Service Bulletin 727–53A0229, dated March 24, 2005, for all Model 727, 727C, 727–100, and 727–100C series airplanes. The service bulletin identifies Group 1 airplanes as airplanes having line number 1 through 695 inclusive and Group 2 airplanes as airplanes having line numbers 696 through 869 inclusive. The service bulletin describes procedures for detailed and high frequency eddy current inspections for cracks in the web and the inner and outer chord of the forward and aft frames of the forward cargo doorway.

The original NPRM referenced pages F.11.2, F.11.12, and F.11.22 of Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994, as the appropriate source of service information for accomplishing the inspections specified in the proposed AD. This supplemental NPRM references the alert service bulletin as the appropriate source of service information for doing the same inspections specified in the NPRM and also for doing high frequency eddy current inspections for cracks of additional areas and a detailed inspection of an additional area. We have revised paragraph (c) of the supplemental NPRM accordingly.

We have also added model designations, Model 727 and 727C series airplanes, to the applicability of the supplemental NPRM. The original NPRM inadvertently specified only Model 727–100 and –100C series airplanes.

Comments

Comments were submitted on the original NPRM. Due to the release of new service information, those comments are no longer applicable and are not addressed by this supplemental NPRM.

Conclusion

Since this change expands 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.

Differences Between the Supplemental NPRM and the Service Bulletin

Although the service bulletin specifies an effectivity of all Model 727, 727C, 727–100, and 727–100C series airplanes, this supplemental NPRM specifies an applicability of Boeing Model 727, 727C, 727–100, and 727–100C series airplanes, line numbers 1 through 694 inclusive. After the release of the service bulletin, we received a report from Boeing that the Group 2 airplanes identified in the service bulletin are not affected by the unsafe condition. Boeing stated that the Group 2 airplanes have a different configuration (due to structural improvements during production) than the Group 1 airplanes and have not had any history of reported cracks. In addition, the Group 1 airplane having line number 695 also has a different configuration due to a modification. We agree with Boeing and have determined that only the Group 1 airplanes identified in the service bulletin, which are those having line numbers 1 through 694, are subject to the identified unsafe condition. We have revised the applicability of the original NPRM accordingly. This difference has been coordinated with Boeing. Boeing is planning to issue a new revision of the service bulletin to address this change.

Although the service bulletin recommends accomplishing the initial inspections within 24,000 total flight cycles, we have determined that this interval would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. After the release of the service bulletin, we received a report of a crack found on an affected airplane at 23,400 flight cycles. In developing an appropriate compliance time for this supplemental NPRM, we considered Boeing's recommendation of using a revised threshold of 21,000 total flight cycles. We agree with Boeing and find that a 21,000 total-flight-cycle compliance time represents an appropriate interval for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Boeing, and as stated previously, Boeing plans to issue a new revision of the service bulletin to account for these changes.

The service bulletin specifies that you may provide the manufacturer with crack information, and they will provide you instructions on how to repair certain conditions, but this supplemental NPRM 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 Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Operators should note that, although the Accomplishment Instructions of the service bulletin describe procedures for reporting discrepancies, this supplemental NPRM would not require those actions. The FAA does not need this information from operators.

Interim Action

We consider this supplemental NPRM interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

There are approximately 211 airplanes of the affected design in the worldwide fleet. The FAA estimates that 116 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 to 8 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $45,240 and $60,320, or between $390 and $520 per airplane, per inspection cycle.

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

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations 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:

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:

Boeing: Docket 2003–NM–238–AD.

Applicability: Boeing Model 727, 727C, 727–100, and 727–100C series airplanes, line numbers 1 through 694 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout, which could result in the loss of the FCD and rapid decompression of the airplane, accomplish the following:

Note 1: This AD is related to AD 98–11–03 R1, amendment 39–10983 (64 FR 989, January 7, 1999), and affects Structural Significant Item (SSI) F–11B of the Boeing 727 Supplemental Structural Inspection Document (SSID) program, D6–48040–1, Revision H, dated June 1994.

Initial and Repetitive Inspections

(a) For airplanes on which the forward and aft edge frames of the lower lobe FCD cutout have not been inspected per AD 98–11–03 R1 as of the effective date of this AD: Prior to the accumulation of 21,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, do the inspections specified in paragraph (c) of this AD.

(b) For airplanes on which the forward and aft edge frames of the lower lobe FCD cutout have been inspected per AD 98–11–03 R1 as of the effective date of this AD: Within the next scheduled inspection required by AD 98–11–03 R1, or within 3,000 flight cycles after the effective date of this AD, whichever occurs first, do the inspections specified in paragraph (c) of this AD.

(c) At the time specified in paragraph (a) or paragraph (b) of this AD, as applicable: Perform the detailed and high frequency eddy current inspections for cracks in the web and the inner and outer chords of the forward and aft frames of the forward cargo doorway in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–53A0229, dated March 24, 2005. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Action

(d) If any crack is found during any inspection required by paragraph (c) of this AD: Before further flight, repair per 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 Commercial Airplanes 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 meet the certification basis of the airplane, and the approval must specifically reference this AD.

Certain Actions Constitute Compliance With AD 98–11–03 R1

(e) Accomplishment of the inspections specified in paragraph (c) of this AD is terminating action for the inspections required by AD 98–11–03 R1 that pertain to SSI F–11B of Boeing Document No. D6–48040–1, Boeing 727 SSID, Revision H, dated June 1994, for the areas specified in paragraph (c) of this AD only. Accomplishment of the actions required by paragraph (c) of this AD does not terminate the inspections required by AD 98–11–03 R1 for the remaining areas of SSI F–11B and does not terminate the remaining requirements of AD 98–11–03 R1.

No Reporting Required

(f) Although the service bulletin referenced in this AD specifies to provide certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16537 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22147; Directorate Identifier 2005–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 Airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP 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 EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. This proposed AD would require modification of the logic of the steering system of the nose landing gear (NLG) wheel. This proposed AD results from the reports of the loss of directional control of the airplane on the ground after an internal failure of the NLG wheel steering system. We are proposing this AD to prevent failure of the NLG wheel steering system, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 21, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service

information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22147; Directorate Identifier 2005–NM–114–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

You may examine the 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 receives them.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, notified us that an unsafe condition may exist on certain EMBRAER Model EMB–135 airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes. The DAC advises that there are reports of the loss of directional control of the airplane on the ground after an internal failure of the steering system of the nose landing gear (NLG) wheel. All events took place after the pilot attempted to use the steering control hand wheel following the display of a caution message ''STEER INOP'' on the engine indicating and crew alerting system (EICAS). This condition, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

EMBRAER has issued Service Bulletin 145LEG–32–0020, dated April 1, 2005 (for Model EMB–135BJ airplanes); and Service Bulletin 145–32–0104, dated January 18, 2005 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes). The service bulletins describe procedures for modifying the logic of the NLG wheel steering system. The modification consists of replacing a relay with a new relay, installing an additional relay, and routing wires. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DAC mandated the service information and issued Brazilian airworthiness directive 2005–04–02, dated April 30, 2005, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil 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. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes 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.

Difference Between Proposed AD and Foreign AD

Brazilian airworthiness directive 2005–04–02, dated April 30, 2005, is applicable to ''all EMBRAER Model EMB–145( ) and EMB–135( ) aircraft models in operation.'' However, this does not agree with EMBRAER Service Bulletin 145LEG–32–0020, dated April 1, 2005, and Service Bulletin 145–32–0104, dated January 18, 2005, which state that only certain EMBRAER Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes are affected and identify the affect airplanes by serial number. This proposed AD would be applicable only to the airplanes listed in the service bulletins. This difference has been coordinated with the DAC.

Costs of Compliance

This proposed AD would affect about 620 airplanes of U.S. registry. The proposed actions would take about 6 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost between $49 and $391. Based on these figures, the estimated cost of the proposed AD for U.S. operators is between $272,180 and $484,220, or between $439 and $781 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 and placed it in the AD docket. 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 Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–22147; Directorate Identifier 2005–NM–114–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–135BJ airplanes, identified in EMBRAER Service Bulletin 145LEG–32–0020, dated April 1, 2005; and Model EMB–135ER, –135KE, –135KL, and –135LR airplanes, and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, identified in EMBRAER Service Bulletin 145–32–0104, dated January 18, 2005; certificated in any category.

Unsafe Condition

(d) This AD results from reports of the loss of directional control of the airplane on the ground after an internal failure of the steering system of the nose landing gear (NLG) wheel. We are issuing this AD to prevent failure of the NLG wheel steering system, which could result in 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.

Modification

(f) Within 6,000 flight hours or 36 months after the effective date of this AD, whichever occurs first, modify the logic of the NLG wheel steering system in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145LEG–32–0020, dated April 1, 2005 (for Model EMB–135BJ airplanes); or Service Bulletin 145–32–0104, dated January 18, 2005 (for Model EMB–135ER, –135KE, –135KL, and –135LR airplanes; and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes); as applicable.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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

(h) Brazilian airworthiness directive 2005–04–02, dated April 30, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16536 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22146; Directorate Identifier 2002–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier Model DHC–7 series airplanes. This proposed AD would require implementing a corrosion prevention and control program (CPCP) either by accomplishing specific tasks or by revising the maintenance inspection program to include a CPCP. This proposed AD is prompted by the determination that, as airplanes age, they are more likely to exhibit indications of corrosion. We are proposing this AD to prevent structural failure of the airplane due to corrosion.

DATES: We must receive comments on this proposed AD by September 21, 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.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, 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) 228–7323; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

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–2005–22146; Directorate Identifier 2002–NM–184–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.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.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 all Bombardier Model DHC–7 series airplanes. TCCA advises that, as airplanes age, they are more likely to exhibit indications of corrosion. Operators must implement a Corrosion Prevention and Control Program (CPCP) that identifies specific areas to be inspected to minimize and control deterioration of the airplane from corrosion. This condition, if not corrected, could result in structural failure of the airplane.

Relevant Service Information

Bombardier has issued de Havilland Inc. Corrosion Prevention and Control Manual, DHC–7 (Dash 7), Product Support Manual (PSM) 1–7–5, dated May 13, 1997. (In this proposed AD, we refer to this publication as ''the Manual.'')

The Introduction to the Manual defines three levels of corrosion:

- Level 1 corrosion:

1. Occurs between repetitive inspections, is local, and can be reworked within certain limits; or

2. Is local but exceeds allowable limits and is attributed to an event not typical of the usage of the other airplanes in the operator's fleet; or

3. Exceeds allowable limits but for which only light corrosion has been found in previous inspections.

- Level 2 corrosion:

1. Occurs between repetitive inspections and exceeds allowable limits, necessitating a repair or partial or complete replacement of a structural significant element; or

2. Occurs between repetitive inspections, is widespread, and requires rework approaching allowable limits.

- Level 3 corrosion is found during initial or repetitive inspections and is determined to be a potentially urgent unsafe condition necessitating expeditious action.

Following the Introduction, the Manual is divided into three basic parts:

- Part 1 refers to Part 1 of PSM 1–GEN–5, which contains general information on corrosion.
- Part 2 describes specific inspections for corrosion, including the effectivity, method, objective, and relevant PSM references for each inspection.
- Part 3 contains the Recommended Corrosion Inspection Program that applies to the subject airplanes, including corrosion task numbers, inspection thresholds, repetitive intervals, and necessary re-protection actions.

TCCA mandated the Manual and issued Canadian Airworthiness Directive CF–98–03, dated February 27, 1998, to ensure the continued airworthiness of these airplanes in Canada.

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 us informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require implementing a CPCP either by accomplishing specific tasks or by revising the maintenance inspection program to include a CPCP. The proposed AD would require you to use the Manual described previously to perform these actions. The proposed AD also would require you to report findings of Level 3 corrosion to us, and findings of Level 2 or 3 corrosion to the airplane manufacturer.

Differences Between the Proposed AD and Canadian Airworthiness Directive

Canadian Airworthiness Directive CF–98–03 specifies the following compliance times for the initial inspection:

- For airplanes produced before January 1, 1986: Before December 31, 2000, or 20 years after the airplane's production date, whichever is later.
- For airplanes produced after December 31, 1985: Before December 31, 2005.

However, this proposed AD would require that you do the initial inspection within 12 months after the effective date of this AD. In developing an appropriate compliance time for this AD, we considered the compliance times specified in Canadian Airworthiness Directive CF–98–03, the manufacturer's recommendation, and the degree of urgency associated with the subject unsafe condition. We also considered the fact that the Manual (which is the appropriate source of service information referenced in this proposed AD) has been available to all operators of affected airplanes since May 1997. In light of all of these factors, we find that a 12-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Also, Canadian airworthiness directive CF–98–03 specifies that findings of Level 2 and 3 corrosion must be reported to the airplane manufacturer, but CF–98–03 does not provide a compliance time for this action. This proposed AD specifies that these findings must be reported to the airplane manufacturer at the time specified in Section 5.0 of Part 3 of the Manual (*i.e.*, 60 days after confirming Level 2 corrosion, or 21 days after confirming Level 3 corrosion), or within

10 days after the effective date of the AD, whichever is later.

Costs of Compliance

This proposed AD would affect about 26 airplanes of U.S. registry. The 148 specific inspections specified in the Manual would take about 48 work hours per airplane, per inspection cycle, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $81,120, or $3,120 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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–2005–22146; Directorate Identifier 2002–NM–184–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by September 21, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model DHC–7 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the determination that, as airplanes age, they are more likely to exhibit indications of corrosion. We are issuing this AD to prevent structural failure of the airplane due to corrosion.

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.

Manual References

(f) The term ''the Manual,'' as used in this AD, means the de Havilland Inc. Corrosion Prevention and Control Manual, DHC–7 (Dash 7), Product Support Manual (PSM) 1–7–5, dated May 13, 1997.

Initial Inspections

(g) Within 12 months after the effective date of this AD, perform each of the Corrosion Tasks, including re-protection actions, as applicable, specified in Part 3 of the Manual by accomplishing the basic tasks defined in Parts 2 and 3 of the Manual, in accordance with the procedures of the Manual.

Repetitive Inspections

(h) Except as provided by paragraph (i) of this AD, repeat each of the Corrosion Tasks, and re-protection actions, as applicable, specified in Part 3 of the Manual at intervals not to exceed 3 or 6 years, as specified in Part 3 of the Manual.

(i) After accomplishment of each initial Corrosion Task required by paragraph (g) of this AD, the FAA or Transport Canada Civil Aviation (TCCA) (or its delegated agent) may approve the incorporation into the operator's approved maintenance/inspection program of the Corrosion Prevention and Control Program (CPCP) specified in the Manual and this AD; or an equivalent program that is approved by the FAA or TCCA. In all cases, the initial Corrosion Task for each airplane area must be completed in accordance with the compliance time specified in paragraph (g) of this AD. Amendment of the operator's approved maintenance/inspection program to include an approved CPCP constitutes terminating action for the requirements of this AD.

Corrective Actions

(j) If any corrosion is found during accomplishment of any action required by paragraph (g) or (h) of this AD: Within 30 days after the finding, rework, repair, or replace any applicable part, as applicable, in accordance with Section 4.0 of Part 3 of the Manual.

Reporting Requirements

(k) If any Level 3 corrosion, as defined in the Introduction of the Manual, is found, do paragraphs (k)(1) and (k)(2) of this AD.

(1) At the time specified in paragraph (k)(1)(i) or (k)(1)(ii) of this AD, whichever is later, submit a report of the findings to the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; fax (516) 568–2716. The report must follow the format specified in Section 5.0 of Part 3 of the Manual, or be submitted using a Service Difficulty Report, as applicable. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(i) Within 3 days after the finding of Level 3 corrosion.

(ii) Within 10 days after the effective date of this AD.

(2) At the time specified in paragraph (k)(2)(i) or (k)(2)(ii) of this AD, whichever is later, submit a plan to the FAA to identify a schedule for accomplishing the applicable Corrosion Task on the remainder of the operator's fleet, or data substantiating that the Level 3 corrosion that was found is an isolated case. For the purposes of this paragraph, ''FAA'' means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI (*e.g.*, Part 121, 125, and 135 operators), and the cognizant Flight Standards District Office for other operators (*e.g.*, Part 91 operators). Information collection requirements in this AD are approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and are assigned OMB Control Number 2120–0056.

(i) Within 10 days after the finding of Level 3 corrosion.

(ii) Within 10 days after the effective date of this AD.

(l) If any Level 2 or 3 corrosion, as defined in the Introduction of the Manual, is found, at the applicable time specified in Section 5.0 of Part 3 of the Manual, or within 10 days after the effective date of this AD, whichever is later, report these findings to the manufacturer according to Section 5.0 of Part 3 of the Manual. Information collection requirements in this AD are approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and are assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(n) Canadian airworthiness directive CF–98–03, dated February 27, 1998, also addresses the subject of this AD.

Issued in Renton, Washington, on August 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16535 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22148; Directorate Identifier 2005–NM–033–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; A300 B4–600, B4–600R, and F4–600R Series Airplanes, and C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Airbus Model A310–200 and A310–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Airbus model A300–600 and A310 series airplanes. The existing AD currently requires repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on actions, if necessary. This proposed AD would require new repetitive inspections for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand), and related investigative/corrective actions if necessary. This proposed AD also would require sending a report of certain information to the manufacturer. The proposed AD also would add airplanes to the applicability of the existing AD. This proposed AD results from findings of severe corrosion on airplanes previously inspected in accordance with the existing AD. We are proposing this AD to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

DATES: We must receive comments on this proposed AD by September 21, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for Airbus Model A310 service information identified in this proposed AD. Contact Jacques Leborgne, Airbus Customer Service Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; fax (+33) 5 61 93 36 14, for Airbus Model A300 service information identified in this proposed AD.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''Docket No. FAA–2005–22148; Directorate Identifier 2005–NM–033–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed 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 may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the 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 receives them.

Discussion

On September 10, 1998, we issued AD 98–19–22, amendment 39–10763 (63 FR 49656, September 17, 1998), for certain Airbus Model A310 and A300–600 series airplanes. That AD requires repetitive visual inspections to detect corrosion on the lower rim area of the fuselage rear pressure bulkhead; and follow-on actions, if necessary. That AD resulted from issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. We issued that AD to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

Other Relevant Rulemaking

On June 21, 2001, we issued AD 2001–14–17, amendment 39–12328 (66

FR 36154, July 11, 2001), for all Airbus Model A300 B2 and B4 series airplanes. That AD requires a one-time inspection to detect and correct corrosion of the lower bulkhead attachment, and corrective action, if necessary. That AD was prompted by reported failure of the rear pressure bulkhead on an Airbus Model A300 series airplane during flight, which lead to rapid cabin decompression. We issued that AD to detect and correct corrosion of the lower bulkhead attachment, which could result in reduced structural integrity of the rear pressure bulkhead and consequent damage to components of the flight control, hydraulic, and auxiliary power unit fuel systems.

AD 2001–14–17 mandated a one-time inspection within 2 to 4 weeks after July 26, 2001 (the effective date of AD 2001–14–17). Based on results of this one-time inspection, the manufacturer developed a modification for certain Airbus Model A300–600 series airplanes, and Model A310 series airplanes; these airplanes are also included in the applicability this proposed AD. That Airbus modification is the subject of another proposed AD: Docket No. FAA–2005–21343; Directorate Identifier 2004–NM–117–AD (70 FR 32547, June 3, 2005).

Actions Since AD 98–19–22 Was Issued

Since we issued AD 98–19–22, severe corrosion has been found on certain airplanes that were previously inspected in accordance with that AD. Based on those findings, we have determined that the inspection methods in AD 98–19–22 are obsolete and inadequate, and that a new inspection program is necessary. Therefore, the actions from AD 98–19–22 are not retained or repeated in this proposed AD. In addition, since we issued AD 98–19–22, we have determined that certain additional Airbus Model A300 B2 and A300 B4, and Airbus Model A310–200 and A310–300 series airplanes would be affected by the actions in this proposed AD.

Relevant Service Information

Airbus has issued the service bulletins in the following table.

AIRBUS SERVICE BULLETINS

Airbus model	Service bulletin	Date
A300 B2 and A300 B4 series airplanes	A300–53–0363	October 27, 2004.
A300–600 series airplanes	A300–53–6136	October 27, 2004.
A310–200 and A310–300 series airplanes	A310–53–2114	October 27, 2004.

The service bulletins provide procedures for doing the following repetitive inspections for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand):

- Two special detailed inspections, one before cleaning and one after cleaning, of the internal and external surface of the lower rim angle in the area of the drainhole (inspection areas AI, AII, AIII, and B);
- A detailed visual inspection of the cleat profile splice at the airplane centerline (inspection area C); and
- For A300 B2 and A300 B4 series airplanes: an eddy current inspection and an X-ray inspection of area D.

If corrosion is found during these inspections, the service bulletins provide procedures for doing several related investigative and corrective actions, depending on the inspection area and inspection findings. These related investigative and corrective actions are described below.

For all inspection areas where corrosion was found, the service bulletins provide procedures for doing the following applicable actions, as described in Figure 2, Sheet 2 of the service bulletins:

- If the corrosion is within certain permanent limits specified in the service bulletin, repair the paint, repair the sealant, and re-install the retainer angle if necessary;
- If the corrosion is within certain temporary limits specified in the service bulletin, contact Airbus for repair instructions within 6 months or 1 year, depending on the extent of the corrosion.
- If the corrosion exceeds certain limits specified in the service bulletin, contact Airbus for repair instructions before further flight.

For inspection area AII, the service bulletins provide procedures for doing a detailed visual inspection for corrosion of the newly visible area. If corrosion is found in area AII during this inspection, or if any previous inspection indicates that there may be corrosion in area AIII, the service bulletins provide procedures for removing the retainer angle and support sealant, doing a detailed visual inspection for corrosion, cracks, or cut lines of the newly visible area (inner rim angle and cleat profile), and doing the following applicable actions based on the inspection results:

- If the corrosion is greater than 5.0 mm to the cleat profile, or if no crack is found, remove any corrosion and do the applicable corrective action described in Figure 2, Sheet 2 of the service bulletins.
- If any cut line or crack is found, the corrective action is to contact Airbus for repair instructions.

If, when accomplishing certain inspections, any corrosion is found on or near the fasteners, the service bulletins provide procedures for doing a rototest and installing titanium fasteners instead of steel fasteners. In addition, the service bulletins specify that operators should contact Airbus if any structural repair is necessary.

The service bulletins also specify that operators should send a Record Sheet to the manufacturer related to all inspections and findings.

The DGAC mandated the service information and issued French airworthiness directive F–2004–193, dated December 22, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane 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. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 98–19–22. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the Proposed AD, the French Airworthiness Directive, and the Service Information.''

This proposed AD also requires that operators report corrosion findings to

Airbus. This information will help determine the extent of the corrosion problems in the affected fleets. Based on the results of these reports, we may determine that further corrective action is warranted.

Differences Among the Proposed AD, the French Airworthiness Directive, and the Service Information

The French airworthiness directive states that any repair for detected corrosion must be done within the associated deadlines in Figure 2 Sheet 2 of the applicable service bulletin. Those deadlines, specified in the ''Temporary Limits for Removal of Corrosion,'' section of the figure, range from 6 months to 1 year depending on the extent of the corrosion damage. To accomplish these repairs, the service bulletins also state that operators should contact Airbus for certain repair instructions. However, this proposed AD would require operators to repair all detected damage that is within the corrosion limits described in the ''Temporary Limits for Removal of Corrosion'' not at the time specified in Figure 2 Sheet 2 of the applicable service bulletin, but before further flight, and using a method that we, or the DGAC (or its delegated agent) approve.

Although the French airworthiness directive specifies a compliance time based on an airplane's ''entry into service,'' this proposed AD would specify a compliance time based on ''the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.'' This decision is based on our determination that ''entry into service'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

Although the service bulletins that are mandated by the French airworthiness directive specify that operators should send a Record Sheet to the manufacturer related to all inspections and findings, this proposed AD would require operators only to report corrosion findings.

These differences have been coordinated with the DGAC.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the service bulletins is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Interim Action

This AD is considered to be interim action. The reports that would be required by this proposed AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the corrosion, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Costs of Compliance

This proposed AD would affect about 190 airplanes of U.S. registry. The new proposed actions would take about 10 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $123,500, or $650 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–10763 (63 FR 49656, September 17, 1998) and adding the following new airworthiness directive (AD):

Airbus: Docket No. FAA–2005–22148; Directorate Identifier 2005–NM–033–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 21, 2005.

Affected ADs

(b) This AD supersedes AD 98–19–22, amendment 39–10763.

Applicability

(c) This AD applies to all airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRBUS AIRPLANES AFFECTED BY THIS AD

Airbus model	As identified in Airbus Service Bulletin—	Dated—
A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes	A300–53–0363	October 27, 2004.
A300 B4–601, B4–603, B4–620, B4–622, A300 B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes.	A300–53–6136	October 27, 2004.
A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes	A310–53–2114	October 27, 2004.

Unsafe Condition

(d) This AD results from findings of severe corrosion on airplanes previously inspected in accordance with the existing AD. We are issuing this AD to detect and correct corrosion at the lower rim area of the fuselage rear pressure bulkhead, which could result in reduced structural integrity of the bulkhead, and consequent decompression of the cabin.

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) For the purposes of this AD, the term ''service bulletin'' means the accomplishment instructions of the applicable service bulletin identified in Table 1 of this AD.

Inspections and Corrective Actions

(g) Within 60 months since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 18 months after the effective date of this AD; whichever is later: Do the detailed inspection, special detailed inspections, and any applicable eddy current and X-ray inspection, for corrosion on the rear pressure bulkhead between stringer (STGR) 27 (right hand) and STGR27 (left hand) in accordance with the applicable service bulletin, and repeat these inspections thereafter at intervals not to exceed 36 months. Do any applicable related investigative and corrective actions before further flight in accordance with the applicable service bulletin, except as provided by paragraph (h) of this AD.

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

Note 2: For the purposes of this AD, a special detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. The examination is likely to make extensive use of specialized inspection techniques and/or equipment. Intricate cleaning and substantial access or disassembly procedure may be required.''

(h) If any corrosion damage or crack is found during any inspection or corrective action required by this AD, and the service bulletin recommends contacting Airbus for repair instructions: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Reporting

(i) Submit a report of corrosion found during the inspections required by paragraph (g) of this AD to SE–A21, AIRBUS CUSTOMER SERVICES DIRECTORATE, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the inspection type, a description of any corrosion found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(j)(1) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) AMOCs approved previously according to AD 98–19–22, amendment 39–10763, are not approved as AMOCs for this AD.

Related Information

(k) French airworthiness F–2004–193 dated December 22, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16534 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22018; Directorate Identifier 2005–CE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. This proposed AD would require you to determine (maintenance records check and/or inspection) whether certain nose landing gear (NLG), main landing gear (MLG), and MLG shock absorber assemblies with a serial number beginning with ''AM'' are installed, and, if installed, would require you to replace them with ones without the ''AM.'' This proposed 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 the NLG, MLG, and MLG shock absorber assemblies that are affected by hydrogen embrittlement, which could result in failure of the landing gear. This failure could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

DATES: We must receive any comments on this proposed AD by September 23, 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 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–22018; Directorate Identifier 2005–CE–41–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–2005–22018; Directorate Identifier 2005–CE–41–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–2005–22018; Directorate Identifier 2005–CE–41–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that some components of the main landing gear (MLG), nose landing gear (NLG), and MLG shock absorber assemblies have the potential to fail during operation.

Investigations revealed that an improper cadmium plating process applied to the high strength steel part causes the problem. This can result in hydrogen embrittlement. Affected are only components that are installed on MLG, NLG, and MLG shock absorber assemblies, with serial numbers that start with the letters ''AM.'' Components in this condition can experience a decreased fatigue life.

What is the potential impact if FAA took no action? Failure of the nose or main landing gear could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

Is there service information that applies to this subject? Pilatus has issued Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—Checking to identify NLG, MLG, and MLG shock absorber assemblies with serial numbers that start with the letters AM; and

—Replacing, if necessary, specified components in all NLG, MLG, and MLG shock absorber assemblies which have serial numbers that start with the letters AM.

What action did the FOCA take? The FOCA classified this service bulletin as mandatory and issued Swiss AD Number HB–2005–168, dated May 3, 2005, to ensure the continued airworthiness of these airplanes in Switzerland.

Did the FOCA inform the United States under the bilateral airworthiness agreement? These Pilatus Models PC–12 and PC–12/45 airplanes are manufactured in Switzerland 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 FOCA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the FOCA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Pilatus Models PC–12 and PC–12/45 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct the NLG, MLG, and MLG shock absorber assemblies that are affected by hydrogen embrittlement which could result in failure of the landing gear. This failure could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

Even though the serial number effectivity of the FOCA AD and Pilatus service bulletin only includes MSN 101 through MSN 471 and MSN 473 through MSN 482, FAA believes that, although the practice of swapping of parts, components, and assemblies is rare, it is still possible. Therefore, we are proposing that the effectivity include Pilatus Models PC–12 and PC–12/45

airplanes with MSN 101 through MSN 625.

What would this proposed AD require? This proposed AD would require you to determine (maintenance records check and/or inspection) whether certain NLG, MLG, and MLG shock absorber assemblies with a serial number beginning with ''AM'' are installed, and, if installed, would require you to replace them with ones without the ''AM.''

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 350 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 check of the logbook to identify NLG, MLG, and MLG shock absorber assemblies with serial numbers that start with the letters AM:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Not applicable	$65.	350 × $65 = $22,750.

We estimate the following costs to do any necessary inspection and replacement of all possible NLG, MLG, and MLG shock absorber assemblies that would be required based on the results of this proposed check of the logbook. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
41 work hours × $65 per hour = $2,665	$3,800 for the NLG kit, $850 for the MLG kit, and $2,600 for the MLG shock absorber assembly kit.	$2,665 + $3,800 + $850 + $2,600 = $9,915.

Pilatus will provide warranty credit for replacing the specified assemblies to the extent stated in the service information.

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–2005–22018; Directorate Identifier 2005–CE–41–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–2005–22018; Directorate Identifier 2005–CE–41–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 September 23, 2005.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PC–12 and PC–12/45 airplanes, manufacturer serial numbers (MSN) 101 through MSN 625, 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 Switzerland. The actions specified in this AD are intended to detect and correct the nose

landing gear (NLG), main landing gear (MLG), and MLG shock absorber assemblies that are affected by hydrogen embrittlement, which could result in failure of the landing gear. This failure could lead to nose or main landing gear collapse during operation with consequent loss of airplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Maintenance Records Check:	Within the next 100 hours time-in-service (TIS) or 12 calendar months after the effective date of this AD, whichever occurs first, unless already done.	No special procedures necessary to check the maintenance records.
(i) *For MSN 101 through MSN 471 and MSN 473 through MSN 482:* Check the maintenance records to determine whether the following replacements have been made:		
(A) Nose landing gear (NLG) assemblies, part number (P/N) 532.20.12.038 and P/N 532.20.12.039 with serial numbers (S/N) AM 001 through AM 045 and AM 048 through AM 054;		
(B) Main landing gear (MLG) assemblies, P/N 532.10.12.049 and P/N 532.10.12.050 with S/N AM 001 thru AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, and AM 053; and		
(C) MLG shock absorber assemblies, P/N 532.10.12.175, with S/N AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, AM 103 through AM 107		
(ii) *For MSN 472 and MSN 483 through MSN 625:* Verify that the S/N parts identified in paragraphs (e)(1)(i)(A), (e)(1)(i)(B), and (e)(1)(i)(C) of this AD have not been installed		
(iii) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may make this check. You must make an entry into the aircraft records that shows compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9)		
(2) If you find as a result of the check required by paragraph (e)(1)(i) of this AD that there is no record of the specified assembly replacement, or as a result of the check required by paragraph (e)(1)(ii) of this AD that parts have been installed in the service, then inspect:	Within the next 100 hours time-in-service (TIS) or 12 calendar months after the effective date of this AD, whichever occurs first, unless already done.	Follow Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004.
(i) The NLG assemblies, P/N 532.20.12.038 and P/N 532.20.12.039, for any S/N that starts with AM 001 through AM 045 and AM 048 through AM 054		
(ii) The MLG assemblies, P/N 532.10.12.049 and P/N 532.10.12.050, for any S/N that starts with AM 001 thru AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, and AM 053		
(iii) The MLG shock absorber assemblies, P/N 532.10.12.175, for any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, and AM 103 through AM 107		
(iv) You may choose to do the inspection without doing the maintenance records check		
(3) If during the inspection required by paragraph (e)(2) of this AD, you find:.	Before further flight after the inspection required by paragraph (e)(2) of this AD.	Follow Pilatus PC12 Service Bulletin No. 32–016, dated March 11, 2004.
(i) Any NLG assembly, P/N 532.20.12.038 and P/N 532.20.12.039, with any S/N that starts with AM 001 through AM 045 or AM 048 through AM 054, replace the NLG specific components with new components		
(ii) Any MLG assembly, P/N 532.10.12.049 and P/N 532.10.12.050, with any S/N that starts with AM 001 thru AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, or AM 053, replace the MLG specific components with new components		
(iii) Any MLG shock absorber assembly, P/N 532.10.12.175, with any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, or AM 103 through AM 107, replace the MLG shock absorber specific components with new components		
(4) Do not install:	As of the effective date of this AD	Not Applicable.
(i) Any NLG assembly, P/N 532.20.12.038 and P/N 532.20.12.039, with any S/N that starts with AM 001 through AM 045 or AM 048 AD. through AM 054		
(ii) Any MLG assembly, P/N 532.10.12.049 and P/N 532.10.12.050, with any S/N that starts with AM 001 thru AM 027, AM 029 through AM 045, AM 047 through AM 050, AM 052, or AM 053		

Actions	Compliance	Procedures
(iii) Any MLG shock absorber assembly, P/N 532.10.12.175, with any S/N that starts with AM 001 through AM 017, AM 019, AM 021 through AM 063, AM 065 through AM 070, AM 072 through AM 074, AM 080, AM 084, AM 086, AM 089, AM 090, AM 093 through AM 096, AM 099, or AM 103 through AM 107		

Note 1: AD 2002–14–22, issued on July 8, 2002 (67 FR 46582), and AD 2004–06–05, issued on March 15, 2004 (69 FR 13712), are still applicable.

Note 2: The FAA recommends that you send any removed parts or assemblies to Pilatus.

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 Number HB–2005–168, dated May 3, 2005, also addresses the subject of this AD.

May I Get Copies of the Documents Referenced in This AD?

(h) To get copies of the documents referenced in this AD, contact Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 6208; facsimile: +41 41 619 7311; e-mail: *SupportPC12@pilatus-aircraft.com* or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–22018; Directorate Identifier 2005–CE–41–AD.

Issued in Kansas City, Missouri, on August 16, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16528 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21951; Directorate Identifier 2005–CE–39–AD]

RIN 2120–AA64

Airworthiness Directives; CENTRAIR 101 Series Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all CENTRAIR 101 Series gliders. This proposed AD would require you to make pen and ink changes to the Limitations Section of the glider maintenance manual to eliminate contradictory information concerning the structural life limit. This proposed AD results from a review by FAA of the Limitations Section of the CENTRAIR Model 101AP glider maintenance manual that revealed conflicting information concerning the structural life limit. We are issuing this proposed AD to assure that the published life limit is adhered to and to prevent structural failure of the glider once this life limit is reached.

DATES: We must receive any comments on this proposed AD by September 26, 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 CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2005–21951; Directorate Identifier 2005–CE–39–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA–2005–21951; Directorate Identifier 2005–CE–39–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–2005–21951; Directorate Identifier 2005–CE–39–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? A review by FAA of the Limitations Section of the CENTRAIR Model 101AP glider maintenance manual revealed conflicting information concerning the structural life limit. Page 5.1 of this manual specifies inspection criteria upon accumulating 3,000 hours time-in-service (TIS). However, page 5.01 of the manual identifies a structural life limit of 3,000-hour TIS. CENTRAIR has verified that all the 101 series gliders delivered to the United States have a 3,000-hour life limit with no current extension.

Cumulative fatigue damage and fatigue cracking damage would sufficiently reduce residual strength of the airframe and result in failure of the airframe.

What is the potential impact if FAA took no action? If this situation is not corrected, the published life limit may not be adhered to and the structural integrity of the glider could be compromised.

FAA's Determination and Requirements of This Proposed 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. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to, using pen and ink, change Section 5.1 of the Limitations Section of the CENTRAIR Gliders CENTRAIR 101—101 P—101 A—101 AP Maintenance Manual under ''General Inspection,'' to read, ''The general inspection should be executed every 5 years until the 3,000-hour time-in-service structural life limit is met.''

The above change enforces the 3,000 hours structural life limit set out in page 5.01—Life Limits of the maintenance manual.

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 gliders would this proposed AD impact? We estimate that this proposed AD affects 51 gliders in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected gliders? We estimate the following costs to do this proposed change of the maintenance manual:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. operators
1 work hour × $65 = $65	Not Applicable ..	$65	$3,315

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–2005–21951; Directorate Identifier 2005–CE–39–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):

CENTRAIR: Docket No. FAA–2005–21951; Directorate Identifier 2005–CE–39–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 September 26, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

(c) This AD affects Models 101, 101A, 101AP, and 101P gliders, all serial numbers, certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a review by FAA of the Limitations Section of the CENTRAIR Model 101AP glider maintenance manual that revealed conflicting information concerning the structural life limit. The actions specified in this AD are intended to assure that the published life limit is adhered to and to prevent structural failure of the glider once this life limit is reached.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Using pen and ink, change Section 5.1 of the Limitations Section of the CENTRAIR Gliders CENTRAIR 101–101 P–101 A–101 AP Maintenance Manual under ''General Inspection,'' to read, ''The general inspection should be executed every 5 years until the 3,000-hour time-in-service structural life limit is met.'' The above change enforces the 3,000-hour structural life limit set out in page 5.01—Life Limits of the maintenance manual.	Within the next 30 days after the effective date of this AD.	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may modify the maintenance manual as specified in paragraph (e) of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

Note: Section 5.0 of the Limitations Section of the CENTRAIR Gliders CENTRAIR 101–101 P–101 A–101 AP Maintenance Manual, date of approval, December 16, 1983, references 14 CFR Section 91.163. The Code of Federal Regulations has changed. The correct reference is Section 91.403.

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 Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact CENTRAIR, Aerodome B.P.N. 44, 36300 Le Blanc, France; telephone: 02.54.37.07.96; facsimile: 02.54.37.48.64. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2005–21951; Directorate Identifier 2005–CE–39–AD.

Issued in Kansas City, Missouri, on August 15, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16529 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 050726200–5200–01]

RIN 0691–AA58

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations of the Bureau of Economic Analysis, Department of Commerce (BEA) to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The BE–11 survey is conducted annually and is a sample survey that obtains financial and operating data covering the overall operations of nonbank U.S. parent companies and their nonbank foreign affiliates. To address the current needs of data users while at the same time keeping the respondent burden as low as possible, BEA proposes modification, addition, or deletion of items on the survey forms and in the reporting criteria. Most of the changes are proposed to bring the BE–11 forms and related instructions into conformity with the 2004 BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

DATES: Comments on this proposed rule will receive consideration if submitted on or before 5 p.m. October 21, 2005.

ADDRESSES: You may submit comments, identified by RIN 0691–AA58, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- E-mail: *Obie.Whichard@bea.gov.*
- Fax: Office of the Chief, International Investment Division, (202) 606–5318.
- Mail: Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of

Economic Analysis, BE–50, Washington, DC 20230.

• Hand Delivery/Courier: Office of the Chief, International Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.

Public Inspection: Comments may be inspected at BEA's offices, 1441 L Street NW, Room 7006, between 8:30 a.m. and 5 p.m., Eastern Time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9890.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR Part 806.14 to set forth the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

The BE–11 survey is a mandatory survey and is conducted annually by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

As described below, BEA is proposing several changes to the survey. Most of the changes are to bring the survey into conformity with the most recent Benchmark Survey of U.S. Direct Investment Abroad, which covered 2004. Changes also are proposed to introduce a statistical sampling procedure and to introduce a schedule for reporting summary information on foreign affiliates that were established or acquired during the year but fell below the threshold for being reported on separate foreign-affiliate report forms.

BEA proposes to introduce a sampling procedure that will utilize a new BE–11B(EZ) form. This form will provide a few basic indicators for non-sample foreign affiliates that can be used as a basis for estimating data that otherwise would have to be reported on the lengthier BE–11B(LF) and BE–11B(SF) forms. To reduce respondent burden, BEA proposes the following changes to the Code of Federal Regulations: (1) Direct U.S. Reporters to file selected affiliates on the BE–11B(EZ) form; (2) increase the exemption level for reporting on the BE–11B(SF) form and BE–11C form from $30 million to $40 million; (3) increase the exemption level for reporting on the BE–11B(LF) form from $100 million to $150 million; and (4) increase the exemption level for reporting only selected items on Form BE–11A from $100 million to $150 million. In addition to certain identification items, U.S. Reporters with total assets, sales or gross operating revenues, and net income (loss) less than or equal to $150 million would report only selected items on the BE–11A report. The foreign affiliate exemption level is the level of a foreign affiliate's assets, sales, or net income below which a Form BE–11B(LF), (SF), (EZ) or BE–11C is not required. The exemption levels for the BE–11 survey were last raised following the 1999 benchmark survey and were effective with the annual survey covering the year 2000.

In conjunction with the increase in the exemption level for reporting on Forms BE–11B(SF) and BE–11C, BEA proposes to introduce a schedule on Form BE–11A to collect a few data items for affiliates with assets, sales, and net income between $10 million and $40 million that were established or acquired during the year. The information collected on the new schedule is needed to maintain data quality in the face of the proposed increase in the short-form exemption level, and will help to avoid understatement of estimates for foreign-affiliate activities in emerging economies, where there may be significant entry of smaller affiliates between benchmark surveys.

BEA is proposing a few changes to the report forms themselves. BEA proposes to add questions to the BE–11A form, BE–11B(LF) form, and BE–11B(SF) form to bring the annual survey into conformity with the BE–10 benchmark survey. BEA proposes to collect information on: (1) The broad occupational structure of employment, (2) premiums earned and claims paid by U.S. Reporters and foreign affiliates operating in the insurance industry, and (3) finished goods purchased for resale for U.S. Reporters and foreign affiliates operating in the wholesale and retail trade industries. In addition, BEA proposes to expand the ownership section on the BE–11B(LF) and (SF) forms to include components that are collected on the benchmark survey and to add a retained earnings reconciliation section on the BE–11B(LF) form similar to that on the benchmark survey.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international financial flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA. The annual survey of U.S. direct investment abroad is a sample survey that provides a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

Executive Order 12866

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

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the

Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement has been submitted to the OMB for approval as a revision to a collection currently approved under OMB control number 0608–0053.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

The survey, as proposed, is expected to result in the filing of reports from approximately 1,500 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 78.4 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 117,600 hours (1,500 respondents times 78.4 hours average burden). This estimate is slightly below the burden of 118,400 hours currently requested for this survey in the OMB inventory. The decrease in the burden is largely due to proposed changes in reporting requirements.

Comments are requested concerning: (a) 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; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; (fax: 202–606–5311); and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov,* or by fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. U.S. companies that have direct investments abroad tend to be quite large. The exemption level for the BE–11 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has assets, sales, or net income greater than the exemption level, it must be reported on Form BE–11B(LF), BE–11B(SF), BE–11B(EZ), or BE–11C. With the increase in the exemption level for the BE–11 survey from $30 million to $40 million, about 200 fewer U.S. businesses will be required to file. Therefore, the burden on small businesses would not increase and is likely to decrease since the U.S. parent company required to file the report is usually many times larger than its largest foreign affiliate. To further reduce the reporting burden on smaller businesses, U.S. Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $150 million (positive or negative) are required to report only selected items on the BE–11A form for U.S. Reporters in addition to forms they may be required to file for their foreign affiliates.

Because there are few small businesses that are impacted by this rule, and because those small businesses that are impacted by this rule are subject to only minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

U.S. investment abroad, Multinational corporations, Economic statistics, Penalties, Reporting and recordkeeping requirements.

Dated: August 12, 2005.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173); E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.14(f)(3) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) BE–11—Annual survey of U.S. Direct Investment Abroad: A report, consisting of Form BE–11A and Form(s) BE–11B(LF)(Long Form), BE–11B(SF)(Short Form), BE–11B(EZ), and/or BE–11C, is required of each nonbank U.S. Reporter that, at the end of the Reporter's fiscal year, had a nonbank foreign affiliate reportable on Form BE–11B(LF), (SF), (EZ), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each nonbank U.S. person having a foreign affiliate reportable on Form BE–11B(LF), (SF), (EZ), or BE–11C. If the U.S. Reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, banking activities should be included on the BE–11A using the equity method of accounting.

(A) If for a nonbank U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), (SF), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(B) If for a nonbank U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 27 and Part IV. It must also file a Form BE–11B(LF), (SF), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Foreign Affiliate).

(A) A BE–11B(LF)(Long Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $150 million (positive or negative) at the end of, or

for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) BE–11B(SF)(Short Form) is required to be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative), but for which no one of these items was greater than $150 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(C) A BE–11B(EZ) is required to be filed for each nonbank foreign affiliate that is selected to be reported on this form in lieu of Form BE–11B(LF) or Form BE–11B(SF).

(iii) Form BE–11C (Report for Minority-owned Foreign Affiliate) must be filed for each minority-owned nonbank foreign affiliate that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one U.S. Reporter, but less than 20 percent by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) None of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $40 million (positive or negative). (However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $40 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.)

(B) For fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(C) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(D) Its U.S. parent (U.S. Reporter) is a bank.

(E) It is itself a bank.

(v) Notwithstanding paragraph (f)(3)(iv) of this section, a Form BE–11B(LF), (SF), (EZ) or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

[FR Doc. 05–16601 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–06–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 410

Proposed Temporary Amendment to the Water Quality Regulations, Water Code and Comprehensive Plan To Extend Designation of the Lower Delaware River as a Special Protection Water

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Delaware River Basin Commission will hold a public hearing to receive comments on a proposed amendment to the Commission's *Water Quality Regulations, Water Code*, and *Comprehensive Plan* to extend the temporary classification of the Lower Delaware River as Significant Resource Waters. The temporary classification was enacted by Commission Resolution No. 2005–2 on January 19, 2005 following notice and comment rulemaking. Its effect was to make the Lower Delaware subject to all applicable provisions of the Commission's Special Protection Waters regulations, except those that depend for implementation upon the use of numeric values for existing water quality. Absent further amendment to extend the classification, it will expire on September 30, 2005. The Commission today proposes to extend that date by up to twelve months. The classification would thus expire on September 30, 2006 unless the Commission should either permanently classify the Lower Delaware River or once again extend the temporary classification by rule amendment prior to that date.

The proposed extension is needed because before deciding whether or not to classify certain sections of the Lower Delaware River as Outstanding Basin Waters as originally proposed, and whether to make the temporary Special Protection Waters designation permanent for some or all of the Lower Delaware River, the Commission wishes to fully evaluate implementation options and establish numeric values for existing water quality based upon analysis of a five-year (2000–2004) data set, for which the final year of data only became available late in 2004. Extension of the temporary designation will protect the exceptional value of the Lower Delaware from degradation during the period required to complete this evaluation and conduct a notice and comment rulemaking process on the numeric values and permanent classification.

DATES: The public hearing will be held on Monday, September 26, 2005 at the Commission's regular business meeting, which will begin at 1:30 p.m. Persons wishing to testify are asked to register in advance with the Commission Secretary, at (609) 883–9500 ext. 203. Written comments will be accepted through the close of the public hearing; however earlier submittals would be appreciated.

ADDRESSES: The public hearing will take place at the Commission's office building, located at 25 State Police Drive, West Trenton, NJ. Directions are posted on the Commission's Web site, *http://www.drbc.net*. The complete text of Resolution No. 2005–2, temporarily amending the *Water Quality Regulations, Water Code*, and *Comprehensive Plan* by classifying the Lower Delaware River as Special Protection Waters, is available on the Commission's Web site at *http://www.drbc.net* or upon request from the Delaware River Basin Commission, PO Box 7360, West Trenton, NJ 08628–0360.

FOR FURTHER INFORMATION CONTACT: For further information, contact Pamela M. Bush, Commission Secretary and Assistant General Counsel, Delaware River Basin Commission, at 609–883–9500 ext. 203.

SUPPLEMENTARY INFORMATION: On September 22, 2004, the Delaware River Basin Commission published on its Web site a Notice of Proposed Rulemaking to amend the *Water Quality Regulations, Water Code* and *Comprehensive Plan* to designate the Lower Delaware River—the reach between River Mile 209.5, which is the downstream boundary of the Delaware Water Gap National Recreation Area, and River Mile 133.4, which is the head of tide at Trenton,

NJ—a Special Protection Water. Notice was published in the **Federal Register** on September 23, 2004 (69 FR 57008), the *Delaware Register of Regulations* on October 1, 2004, the *New Jersey Register* on October 4, 2004, the *Pennsylvania Code and Bulletin* on October 9, 2004, and the *New York Register* on October 20, 2004. A public hearing was held on October 27, 2004, and the public was invited to comment, either in person at the hearing or in writing through November 30, 2004. When by Resolution No. 2005–2, the Commission amended its regulations by temporarily designating the Lower Delaware a Special Protection Water, the Commission modified its proposed rule in part based upon comments received on the proposed designation and in part based upon the need for additional analysis before all provisions of the Special Protection Waters regulations could be put into effect in the Lower Delaware.

Dated: August 16, 2005.

Pamela M. Bush,

Commission Secretary.

[FR Doc. 05–16526 Filed 8–19–05; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–122857–05]

RIN 1545–BE65

Converting an IRA Annuity to a Roth IRA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations under section 408A of the Internal Revenue Code (Code). The temporary regulations provide guidance concerning the tax consequences of converting a non-Roth IRA annuity to a Roth IRA. The temporary regulations affect individuals establishing Roth IRAs, beneficiaries under Roth IRAs, and trustees, custodians and issuers of Roth IRAs. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by November 21, 2005.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–122857–05), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–122857–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the IRS Internet site at *http://www.irs.gov/regs* or the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–122857–05).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Cathy A. Vohs, 202–622–6060; concerning submissions and requests for a public hearing, contact Treena Garrett, 202–622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 408A. The temporary regulations (§ 1.408A–4T) contain rules concerning the tax consequences of converting a traditional IRA annuity to a Roth IRA. The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary and proposed regulations.

Applicability Date

These regulations are proposed to be applicable to any Roth IRA conversion where an annuity contract is distributed or treated as distributed from a traditional IRA on or after August 19, 2005. No implication is intended concerning whether or not a rule to be adopted in these regulations is applicable law for taxable years ending before that date.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. Comments are specifically requested regarding the proposed additional guidance discussed in the preamble to the Temporary Regulations under section 408A (i.e., § 1.408A–4T). The IRS and Treasury Department also request comments regarding whether the method used to calculate the fair market value of an annuity contract that is converted to a Roth IRA should also apply for purposes of determining the fair market value of an annuity contact under sections 408(e) and 401(a)(9). All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Cathy A. Vohs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

§ 1.408A–4 also issued under 26 U.S.C. 408A * * *

Par. 2. Section 1.408A–4 is amended by adding, in numerical order, Q–14 and A–14, to read as follows:

§ 1.408A–4 Converting amounts to Roth IRAs.

* * * * *

Q–14. [The text of proposed regulation §1.408A–4, Q–14 is the same as the text of §1.408A–4T, Q–14 published elsewhere in this issue of the **Federal Register**].

Q–14. [The text of proposed regulation § 1.408A–4, Q–14 and A–14 is the same as the text of § 1.408A–4T, Q–14 and A–14 published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 05–16404 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 5, 15, 18, 19, 20, 22, 23, 27, 28, 33, 35, and 36

RIN 1219–AB38

Fees for Testing, Evaluation, and Approval of Mining Products; Correction

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects the preamble to a proposed rule published in the **Federal Register** of August 9, 2005, regarding fees for testing, evaluation, and approval of mining products.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Smith, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939, *smith-rebecca@dol.gov*, (202) 693–9440 (telephone), (202) 693–9441 (facsimile).

Corrections

1. On page 46345, in the first column, under Addresses, change the e-mail address from ''*comments@msha.gov*'' to ''*zzmsha-comments@dol.gov*''.

2. On page 46345, in the first column, under ''Regular Mail or Hand Delivery,'' change the zip code to ''22209–3939''.

3. On page 46346, in the third column, in the third paragraph under ''Section 5.30 Fee Calculation,'' in the second sentence, change the word ''revised'' to ''existing''.

4. On page 46347, in the first column, in the second full paragraph, in the sixth sentence, change the term ''part 5'' to ''part 15''.

5. On page 46348, in the first column, in the second paragraph, in the first sentence, change the word ''applied'' to ''apply''.

§ 22.4 [Corrected]

6. On page 46352, in the second column, in the first sentence of the rule text for § 22.4(a), change the term ''the active investigation of'' to ''an active investigation''.

§ 23.3 [Corrected]

7. On page 46352, in the second column, in the first sentence of the rule text for § 23.3(a), change the term ''the active investigation of'' to ''an active investigation''.

Dated: August 16, 2005.

Robert M. Friend,

Acting Deputy Assistant Secretary.

[FR Doc. 05–16559 Filed 8–19–05; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[Docket No. MO–738]

Public Hearing and Public Comment Period on Termination of Federal Enforcement for Parts of the Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; notice of public comment period and public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), announced our decision to substitute Federal enforcement for parts of the Missouri permanent regulatory program (Missouri program) on August 22, 2003 (68 FR 50944). We are announcing today that the Governor of Missouri petitioned us to consider returning to Missouri the authority to enforce those parts of the Missouri program for which we substituted Federal enforcement. The Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) is the regulatory authority responsible for implementing and enforcing the Missouri program. If we approve Missouri's petition, we will terminate Federal enforcement for those parts of the Missouri program for which we substituted Federal enforcement and return full enforcement authority to the MLRP.

We are providing an opportunity for interested persons to comment on the Missouri Governor's petition to reassume authority of those parts of the Missouri program currently being enforced by us (Administrative Record No. MO–664.42). This document gives the dates and times during which interested persons may submit written comments or participate in the scheduled public hearing regarding Missouri's petition. This document also includes the procedures that we will follow for the public hearing.

DATES: We will accept written comments until 4 p.m., c.d.t., September 29, 2005. Comments received after this time may not be considered in our findings on the petition from the Governor of Missouri to reassume authority of the Missouri program.

Public Hearing: We will hold a public hearing on the proposed rule on September 22, 2005, at 2 p.m., c.d.t. We will accept requests to speak at the public hearing until 4 p.m., c.d.t. on September 16, 2005. If you wish to attend and speak at the hearing, you should follow the procedures under the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: You may submit comments, identified by Docket No. MO–738, by any of the following methods:

- E-mail: *MCR_AMEND@osmre.gov.* Include Docket No. MO–738 in the subject line of the message.
- Mail/Hand Delivery: Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Alton, Illinois 62002.
- Fax: (618) 463–6470.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of all administrative record documents referenced in this document, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. Andrew R. Gilmore, Chief, Alton Field Division, Office of Surface Mining Reclamation and

Enforcement, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, E-mail: *MCR_AMEND@osmre.gov.*

If you wish to attend the public hearing, it will be held at the following location:

The Missouri Department of Natural Resources, 1738 East Elm Street, Bennett Springs Room, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *MCR_AMEND@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. Missouri's Responses to Required Remedial Actions
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Missouri 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 State 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 this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, 925.16, 925.17, 925.18, and 925.19.

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Missouri Legislature only appropriated funds for bond forfeiture reclamation activities. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO–664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that were available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated Federal funds for the abandoned mine land reclamation (AMLR) program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were authorized by the State Legislature. The MLRP indicated that it would try to gain full program funding from the Missouri Legislature for Fiscal Year (FY) 2005.

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri was experiencing difficult budget and revenue shortfalls (Administrative Record No. MO–664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri had adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for parts of the Missouri program. We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities (Administrative Record No. MO–664.4).

In accordance with the provisions of 30 CFR 733.12(f), we announced our decision, effective August 22, 2003, to institute direct Federal enforcement for those parts of the Missouri program that were not fully funded and staffed. We suspended the authority of the MLRP to enforce all portions of the Missouri program except bond forfeiture reclamation activities. We determined that the MLRP had sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. With this substitution of Federal enforcement authority, we outlined a process, including remedial actions, by which Missouri could regain full authority for its program (68 FR 50944).

On April 15, 2004, we clarified our substitution of Federal enforcement for parts of the Missouri program and made findings on the status of the Missouri program (69 FR 19927).

On May 3, 2004, the MLRP notified us that the Missouri Legislature failed to fully fund the Missouri program for the period beginning July 1, 2004, and ending June 30, 2005 (Administrative Record No. MO–664.22). In the same letter, the MLRP outlined its financial and organizational plans to submit a request to its division and department legislative staff to propose funding and staffing that would be needed to reassume authority of the complete active coal regulatory program beginning July 1, 2005. On May 25, 2004, we notified the MLRP that based on its May 3, 2004, submittal, we would continue the current Federal substitution plan for one more year (Administrative Record No. MO–664.24).

By letter dated May 2, 2005, the MLRP notified us that the Director of the Missouri Department of Natural Resources (MDNR) had agreed to seek full return of the regulatory program to Missouri. The MLRP also requested a meeting with us to discuss the plan for the return of the program to Missouri. The MLRP noted that the State budget includes the necessary funding and staffing allocations and that it plans to use remaining past coal fee funds to match the Federal regulatory grant for FY 2006 (Administrative Record No. MO–664.39).

By letter dated May 12, 2005, we advised the MLRP that before Missouri can reassume full authority to implement and enforce the Missouri program, the MLRP must complete the remedial measures specified in 30 CFR 925.18. In accordance with 30 CFR 925.18(c), we requested that the MLRP submit a detailed description of the past coal fee funds that it proposed to use to match the Federal regulatory grant. We also requested that the MLRP provide us with a Missouri Attorney General's opinion on the legality of using these

funds (Administrative Record No. MO–664.40).

On May 26, 2005, we met with the Deputy Director of the MDNR to discuss (1) funding; (2) current staff for the forfeiture program and AMLR plan; (3) Cooperative Agreement funding beginning July 1, 2005, until we approve the return of authority to Missouri; (4) procedural matters; (5) program issues; and (6) bond forfeiture site reclamation progress (Administrative Record No. MO–664.44).

By letter dated May 27, 2005, the Governor of Missouri petitioned us to consider returning to Missouri the authority to implement and enforce those parts of the Missouri program for which we substituted Federal enforcement (Administrative Record No. MO–664.42).

On June 28, 2005, the Director of the MDNR submitted information on the funding and staffing plans that the MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of the MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO–664.48).

II. Missouri's Responses to Required Remedial Actions

A. In order for the MLRP to demonstrate its intent and capability to fully implement and enforce the Missouri program as approved by the Secretary, we required the MLRP to complete certain remedial actions, which we codified at 30 CFR 925.18. The Federal regulation at 30 CFR 925.19 provides that we will consider returning to the MLRP the authority suspended under 30 CFR 925.17 provided that the State has accomplished all remedial actions specified under 30 CFR 925.18; and the MLRP petitions us in writing to consider returning authority to the State. On May 27, 2005, we received a petition from the Governor of Missouri requesting that we return, to the State, the enforcement authority that was suspended under 30 CFR 925.17 (Administrative Record No. MO–664.42). Described below are Missouri's responses to the required remedial actions.

B. *30 CFR 925.18 State Remedial Actions.* 1. 30 CFR 925.18(a)—We required the MLRP to submit to us, by August 22, 2003, a list of all outstanding enforcement actions specifying the abatement date set for each cited violation. On July 22, 2003, the Missouri Attorney General's office provided us with a copy of all outstanding enforcement actions (Administrative Record No. MO–664.13). The notices of violation and cessation orders specified the abatement date set for each cited violation. On April 15, 2004, we determined that the MLRP had satisfied this required remedial action, and we removed paragraph (a) from 30 CFR 925.18. See 69 FR 19932, dated April 15, 2004.

2. 30 CFR 925.18(b)—In accordance with the requirements of the approved Missouri program, the MLRP was to complete administrative disposition of all enforcement actions that were initiated before August 22, 2003. As applicable, the MLRP was to conduct penalty assessments, hold informal conferences and hearings, collect penalties, and terminate or vacate enforcement actions. On November 25, 2003, the MLRP notified us that it had completed administrative disposition of five enforcement actions that were initiated before August 22, 2003 (Administrative Record No. MO–664.17). Additionally, on February 18, 2004, the MLRP notified us that it had completed administrative disposition of the balance of its enforcement actions (Administrative Record No. MO–664.18A).

3. 30 CFR 925.18(c)—Within 30 days of the date on which OSM has received and acknowledged an accurate description of available funding for the regulatory program, the MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address funding, staffing, and adherence to the approved program. On June 28, 2005, the Director of the MDNR submitted information on the funding and staffing plans that the MLRP would use to assume full enforcement authority for the Missouri program as required by 30 CFR 925.18(c). The Director of the MDNR also provided the Missouri Attorney General's written opinion on the legality of the funding proposal (Administrative Record No. MO–664.48).

4. 30 CFR 925.18(d)—Starting on April 1, 2004, the MLRP was to submit to us a report monthly on its progress in obtaining full funding for the Missouri program. The MLRP submitted monthly update reports on its progress in obtaining the funding and staffing needed to reassume its program beginning on May 3, 2004, and continuing through July 7, 2005 (Administrative Record Nos. MO–644.22, MO–664.23, MO–664.26—MO–664.34, MO–664.36—MO–664.45, and MO–664.50).

5. 30 CFR 925.18(e)—Effective September 8, 2003, the MLRP was to take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. were made secure and to supply copies of all documents to us upon request. Beginning in July 2003, the MLRP provided access to all materials that we requested (Administrative Record No. MO–664.13). The MLRP also provided us with copies of all items, such as permit review documents and bond release applications, that were pending when it lost funding for the State program. On April 15, 2004, we determined that the MLRP had satisfied this required remedial action, and we removed paragraph (e) from 30 CFR 925.18. *See* 69 FR 19932, dated April 15, 2004.

After the close of the public comment period and public hearing, we will announce in the **Federal Register** our decision on Missouri's responses to the required remedial actions at 30 CFR 925.18.

III. Public Comment Procedures

In accordance with 30 CFR 925.19(b), we are announcing a public comment period and a public hearing to provide interested parties a means to comment on Missouri's petition to reassume full authority for those parts of the Missouri program that we directly enforce, as specified under 30 CFR 925.17, and the termination of Federal enforcement for those parts of the Missouri program.

After the public comment period and after we review all available information, we will publish our decision to grant in whole or in part or to deny Missouri's petition to reassume full authority for the Missouri program in accordance with 30 CFR 925.19(c).

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific and pertain only to the issue of whether we should terminate Federal enforcement and return full regulatory authority to the State of Missouri. Please include explanations in support of your comments. We will not consider your comments 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 Alton Field Division may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: Docket No. MO–738'' 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 Alton Field Division at (618) 463–6460.

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 review in their entirety.

Public Hearing

The scope of the public hearing will include matters relevant to whether we should grant Missouri's petition to reassume authority for those parts of the Missouri program that we directly enforce and terminate Federal enforcement for those parts of the Missouri program.

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on September 16, 2005. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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.

In addition, we will follow the hearing format and rules of procedure listed below.

1. The hearing will be informal in nature. We will only accept oral and written comments.

2. We ask that attendees sign in upon entering the hearing room.

3. Those wishing to speak must sign the Speaker Registration Form.

4. Speakers will be called in the order in which they register.

5. Based on the number of speakers in attendance, each participant may be limited to 10 minutes.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based upon the nature of the action being taken.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) 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. 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 State regulatory programs must be based solely on a determination of whether the program 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. This determination is based on the fact that there are no Federally-recognized Indian tribes in the State of Missouri and that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

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 State regulatory programs 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 the return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement 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 rule is not expected to result in additional costs to the regulated industry.

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 fact that the rule is not expected to result in additional costs to the regulated industry.

Unfunded Mandates

The return of regulatory authority to the State of Missouri for those portions of the Missouri permanent regulatory program for which we are currently substituting Federal enforcement 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 nature of the action being taken.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 8, 2005.

Chad Calvert,

Acting Assistant Secretary for Land and Minerals Management.

[FR Doc. 05–16573 Filed 8–19–05; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–05–023]

RIN 1625–AA09

Drawbridge Operation Regulations; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the drawbridge operation regulations for bridges on the Willamette River, Oregon. This proposed revision would reorganize the text into a more understandable format with minor editing of the regulations, and change the operating regulations for the draw of the Burnside Bridge across the Willamette River, mile 12.4, at Portland, Oregon. The proposed change to the Burnside Bridge operating regulation will enable the bridge owner to provide single-leaf operation of the bridge, except during the Rose Festival, to facilitate major structural and mechanical rehabilitation of the bridge. Repairs are currently expected to last approximately two years, after which it is expected that the operating regulation will be revised to provide for double-leaf operation again.

DATES: Comments and related material must reach the Coast Guard on or before October 21, 2005.

ADDRESSES: You may mail comments and related material to Commander (oan), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174–1067 where the public docket for this rulemaking is maintained. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Aids to Navigation and Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, 13th Coast Guard District, (206)220–7282.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD13–05–023), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

The operating regulations currently in effect for the drawbridges on the Willamette River are at 33 CFR 117.897. The regulations as they are currently written are confusing as to which exceptions apply to which bridge. The reorganization of the text will simplify and clarify the regulations.

The proposed rule would also enable Multnomah County, the owner of the Burnside Bridge, to rehabilitate the structure. The work includes repairing the drawbridge mechanism, replacing the concrete deck and repairing corroded steel. One side would be disabled throughout the period. The operable side will be indicated via a Local Notice to Mariners.

The Burnside Bridge in the closed position provides 65.5 feet of vertical clearance above 0.0 datum according to the Corps of Engineers at the center of the bascule and 205 feet of horizontal clearance. Drawbridge openings are provided on average 40 times monthly for recreational vessels, tugs and tows, and floating construction equipment. This averages less than twice a day for opening frequency.

The current regulation provides that the spans need not open for the passage of vessels from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except New Years Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. From 8 a.m. to 5 p.m., Monday through Friday, one hour's notice is required for all openings of the upper deck of the Steel Bridge, the Burnside Bridge and the Morrison Bridge, and two hours notice is required at all other times for those 3 bridges. Notice at least 2 hours in advance is also required at all other times to open the draws of the Broadway and Hawthorne Bridges. The draw operates on signal during Rose Festival Week and whenever the river level reaches and remains above +12 feet.

Reorganization of Text

This proposed rule would reorganize the text of 33 CFR 117.897. Currently, the regulation is confusing as to which exceptions to normal bridge operations apply to which bridges. This change will enhance and facilitate comprehension of the regulation.

The conflict between the open period, from 8 a.m. to 5 p.m., and the closed periods, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., would be resolved by changing the open period hours to 9

a.m. to 6 p.m. Additionally, the bridge-specific sound signals would be deleted because they have not been used by mariners for years. The signal would default to the general sound signal of one prolonged blast followed by one short blast prescribed in 33 CFR 117.15.

The regulations covering the Union Pacific railroad bridge, mile 84.3, at Salem would be removed because, under a bridge permit amendment, the bridge has been converted to a fixed span and is therefore no longer an operating drawbridge.

Change of Burnside Bridge Operating Regulation

This proposed rule would provide Multnomah County the opportunity to perform much needed maintenance by allowing it to operate only one leaf instead of two. During the Rose Festival, double-leaf openings would be provided. Recreational vessels should be able to easily pass safely through a single-leaf opening. Most recreational vessels do not require an opening of the draw. Tugs and tows may experience greater difficulty because of winds, currents, loading, etc. The bridge owner is offering an assist tug for such vessels if a request for this assistance is made at least 4 hours in advance. This offer is not embodied in this proposed rule.

Preliminary analysis indicates that most vessel operators will not be inconvenienced by the special operations. Large oceangoing vessels do not normally travel this far upstream on the Willamette and the majority of recreational vessels can pass the drawbridge without an opening. Tugs and tows are the most common vessels that would have to proceed with extra caution. There is a single frequent user of the drawspan. The Burnside Bridge is part of a heavily traveled commuter arterial that serves downtown Portland.

Regulatory Evaluation

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

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

The Coast Guard reached this conclusion based on the fact that the few substantive changes being made are very minor. Most vessels will be able to plan transits to avoid the closed periods. Most commercial vessel owners have indicated that they can tolerate the proposed hours by working around them.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed temporary change may affect some recreational sailboat owners insofar as they must plan their transits around the periods during which the bridges are closed to regain moorage above the drawbridges. We expect these to be few in number.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section, at (206) 220–7282. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would not 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 proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of Information and Regulatory Affairs has not designated this 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 proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the proposed action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Revise section 117.897 to read as follows:

§ 117.897 Willamette River.

(a) The draws of the Union Pacific railroad bridges, mile 119.6 at Albany; and mile 164.3 near Harrisburg, need not open for the passage of vessels. However, the draws shall be returned to operable condition within six months after notification by the District Commander to do so.

(b) The draw of the Oregon State highway bridge, mile 132.1 at Corvallis, shall open on signal if at least seven days notice is given. However, the draw need not be opened on Saturdays, Sundays, or Federal Holidays.

(c) The draws of the bridges listed in paragraph (c)(3) of this section shall open on signal if the specified advance notice is given, subject to the following requirements and exceptions:

(1) The draws need not open for the passage of vessels from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. every Monday through Friday; except that on New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day, the draws shall open during those hours in accordance with the requirements of paragraph (c)(3) of this section.

(2) During Rose Festival Week or when the water elevation reaches and remains above +12 feet, no advance notice is required; except that the closed periods described in paragraph (c)(1) of this section apply.

(3)(i) Broadway Bridge, at Portland, mile 11.7. No advance notice is required. The closed periods described in paragraph (c)(1) of this section do not apply to oceangoing vessels of 750 gross tons or over.

(ii) Steel Bridge (upper deck only), at Portland, mile 12.1. From 9 a.m. to 4 p.m. Monday through Friday, notice must be given at least one hour in advance for draw openings. At all other times, notice at least two hours in advance is required.

(iii) Burnside Bridge, at Portland, mile 12.4. Only single-leaf openings will be provided, except that double-leaf openings will be provided during the Rose Festival. From 9 a.m. to 4 p.m. Monday through Friday, notice at least one hour in advance shall be given for draw openings. At all other times, notice at least two hours in advance is required.

(iv) Morrison Bridge, at Portland, mile 12.8. From 9 a.m. to 4 p.m. Monday through Friday, notice shall be given at least one hour in advance for draw openings. At all other times, notice at least two hours in advance is required.

(v) Hawthorne Bridge, Portland, mile 13.1. No advance notice is required.

Dated: August 8, 2005.

Richard R. Houck,

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

[FR Doc. 05–16516 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 70, No. 161
Monday, August 22, 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

Farm Service Agency

Request for Extension and Revision of a Currently Approved Information Collection; Request for Direct Loan Assistance

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request renewal of the information collection currently approved and used in support of the FSA Farm Loan Programs (FLP). This information collection has been revised for clarification in conjunction with the request for extension of the burden package.

DATES: Comments on this notice must be received on or before October 21, 2005, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Sam Snyder, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522; telephone (202) 720–0599; electronic mail: *Sam.Snyder@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Request for Direct Loan Assistance.

OMB Control Number: 0560–0167.

Expiration Date of Approval: February 28, 2006.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Form FSA–410–1 is used for collecting information for making eligibility and financial feasibility determinations on respondents' requests for direct operating, farm ownership, and emergency loans and for currently indebted borrowers requesting loan servicing assistance as authorized under the Consolidated Farm and Rural Development Act. Collection information for making eligibility and financial feasibility determinations on respondents' requests for direct youth loans will now be made on the new Form FSA–2011. Travel time has been included in the Estimated Annual Burden on Respondents.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 120 minutes per response for the Form FSA–410–1, and 90 minutes for the Form FSA–2011.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 30,461.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 59,343.

Comments are invited on the following: (a) 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; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (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 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. These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Sam Snyder, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW., STOP 0522, Washington, DC 20250–0522.

Comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC on August 5, 2005.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 05–16513 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss and vote on 2005 projects and hold a short public forum (question and answer session). This meeting is being held 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 meeting is open to the public.

DATES: The meeting will be held on August 23, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel Ritter, Stevensville District Ranger and Designated Federal officer, Phone: (406) 777–5461.

Dated: August 15, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–16531 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Public Meeting on Cooperative Research Agenda

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is to notify cooperatives and cooperative associations, university personnel, public and private researchers with interests in agricultural and other rural cooperative policy, and other interested persons that Rural Business-Cooperative Service (RBS) is holding a public meeting for interested persons to express their views on the research needs of rural cooperatives with an emphasis on their business and organizational challenges and appropriate policies for strengthening agricultural and rural cooperatives in the United States.

DATES: The public meeting will be held on September 27, 2005, starting at 9 a.m. eastern time, with registration at 8 a.m. The public meeting will end at 3 p.m. unless concluded earlier.

ADDRESSES: The public meeting will be held in Room 107A Whitten Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC. Persons interested in making a presentation at the meeting should send a written request to Dr. John R. Dunn, Director, Cooperative Resources Management Division, Rural Business-Cooperative Service, Room 4206–S, stop 3253, 1400 Independence Avenue, SW., Washington, DC 20250–3253. Persons that cannot attend the meeting may submit written comments to Dr. John R. Dunn, Director, Cooperative Resources Management Division, Rural Business-Cooperative Service, Room 4206–S, stop 3253, 1400 Independence Avenue, SW., Washington, DC 20250–3253 no later than September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Dr. John R. Dunn, Director, Cooperative Resources Management Division, Rural Business-Cooperative Service, Room 4206–S, stop 3253, 1400 Independence Avenue, SW., Washington, DC 20250–3253, telephone: (202) 720–1374.

SUPPLEMENTARY INFORMATION: The meeting will be conducted by representatives of the Department of Agriculture. The proceedings of the meeting will be transcribed and considered in the development of the cooperative research agenda undertaken by Rural Development's Cooperative Programs in support of the research provisions of the Cooperative Marketing Act of 1926. The purpose of the meeting is to collect input and recommendations from the cooperative and cooperative research communities on priority research topics and research strategies. The Agency will compile written presentations and retain them as a summary of the meeting.

To schedule oral testimony for the public meeting, notify Dr. Dunn, in writing, at the above address. Requests may be sent by facsimile transfer to (202) 690–1375 or e-mailed to: *john.dunn@wdc.usda.gov.* Persons who wish to make oral presentations must restrict presentations to 15 minutes and are encouraged to have written copies of their complete comments, including exhibits, for inclusion in the official record. Written copies should be sent to Dr. Dunn in advance of the meeting. Persons who register at the public meeting and have not been scheduled in advance to present oral testimony will be given an opportunity to do so if time permits. Otherwise, such persons will be allowed the opportunity to submit their views in writing by October 7, 2005, for inclusion in the official record.

Subject to the limitations described in the preceding paragraph, any interested person will be given the opportunity to appear and be heard with respect to matters relevant and material to the subject. However, presiding officials may limit the number of times that any one person may be heard and limit or exclude material that is irrelevant, immaterial, or unduly repetitious. Such action is intended to focus the discussion on the relevant issues, to ensure that all interested persons have an opportunity to participate to the extent time permits, and to prevent undue prolongation of the meeting. Presiding officials may ask questions at the meeting of persons making presentations. The questions and responses will become a part of the official record.

Copies of the official record of the meeting will not be available for distribution from the Department. However, the record will be available for public inspection in Room 4206 at the Cooperative Programs offices, Room 4206 South Building, 1400 Independence Avenue, SW., Washington, DC, during regular business hours.

Dated: August 5, 2005.

Peter J. Thomas,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 05–16525 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 3550, Direct Single Family Housing Loans and Grants and its accompanying Handbooks.

DATES: Comments on this notice must be received by October 21, 2005 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Gale Richardson, Loan Specialist, Single Family Housing, Rural Housing Service, 1400 Independence Avenue, SW., Mail Stop 0783, Washington, DC 20250–0783, telephone number (202) 720–1459.

SUPPLEMENTARY INFORMATION:

Title: Direct Single Family Housing Loans and Grants.

OMB Number: 0575–0172.

Expiration Date of Approval: February 28, 2006.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS), through its direct single family housing loan and grant programs, provides financial assistance to construct, improve, alter, repair, replace or rehabilitate dwellings, which will provide modest, decent, safe and sanitary housing to eligible individuals in rural areas. To assist a customer, they must provide the Agency with a standard housing application (used by government and private lenders), and provide documentation to support the same. Documentation includes verification of income, financial information on assets and liabilities, etc. The information requested is comparable to that required by any private mortgage lender. To assist individuals in obtaining affordable housing, a borrower's house payment may be subsidized to an interest rate as low as 1%. The amount of subsidy is based upon the customer's household income. After receipt of this information, if the customer obtains a loan from RHS, they must update income information on an annual basis to renew the payment subsidy. The aforementioned information required by RHS is vital to be able to process applications for RHS assistance and make prudent loan underwriting and program decisions. It includes borrower financial information such as household income, assets and liabilities and

monthly expenses. Without this information, the Agency is unable to determine if a customer would qualify for any services or if assistance has been granted to which the customer would not be eligible under current regulations and statutes. The Agency also encourages its customers to leverage our mortgage financing with that of other lenders to assist as many customers as possible within our limited resources. In many cases, another lender will leverage and participate with RHS in assisting the customer. In these cases, RHS and the other lender share documentation, with the customer's consent, to reduce duplication. Through our work with participating lenders, the Agency keeps abreast of information required by other lenders to ensure that RHS is not requiring unnecessary information. The Agency continually strives to ensure that information collection burden is kept to a minimum.

As mentioned, these loans are made directly by the Agency. RHS also services these loans for their term (33 or 38 years) and provides tools to assist the customer in becoming a successful homeowner. As discussed, payment subsidies are renewed on an annual basis. In addition, the Agency provides credit counseling and other services to its customers in an effort to assist them in becoming successful. The Agency offers many servicing tools including a moratorium (stop) on payments, modifications to payment subsidies to reflect changes in the customer's income, loan reamortization, payment workouts, etc. To obtain this assistance, the Agency must require certain information such as updated income and financial information, etc., to ensure the customer qualifies for the assistance, and is provided with the correct benefits based upon their circumstances.

Direct single family housing loans are only provided to customers who cannot obtain other credit for their housing needs. Customers are required by statute to refinance with another lender when they are financially able. To ensure the Agency meets its statutory responsibilities, existing customers may be requested to submit updated income and financial information for the Agency to make a determination as to whether they can ''graduate'' to other credit. In addition, should a customer default on a loan which results in liquidation, the Agency needs updated income and financial information to settle any outstanding indebtedness.

With the implementation of EGOV in June 2002, individuals are able to make application on line. We have 64 eForms which the public can access and print for personal use. RHS is committed to automation and reducing the burden upon the public.

Estimate of Burden: Public burden for this collection of information is estimated to average .24 hours per response.

Respondents: Applicants seeking direct single family housing loans and grants from the Agency and approximately 336,000 existing customers who have active loans and grants under the Section 502 and 504 programs.

Estimated Number of Respondents: 300,000.

Estimated Number of Responses per Respondent: 5.6.

Estimated Total Annual Burden on Respondents: 417,631 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments:

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of the Rural Housing Service's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: July 28, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–16512 Filed 8–19–05; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Kentucky Advisory Committee to the Commission will convene at 10 a.m. and adjourn at 11:30 a.m. on September 2, 2005, at Gardiner Hall, 2nd Floor, School of Arts and Sciences, University of Louisville, Louisville, KY 40252. The purpose of the meeting is to discuss the Committee's ongoing project report, The Achievement Gap between African American Students and White Students in Large Urban Areas, and discuss the design of the Committee's second project, The Unitary Status of Public School Districts in Kentucky.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ivy Davis, Acting Chief of the Regional Programs Coordination Unit, (202) 376–7700 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

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

Dated at Washington, DC, August 11, 2005.

Barbara Delaviez,

Acting Director, Regional Programs Coordination Unit.

[FR Doc. 05–16546 Filed 8–19–05; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an Export Trade Certificate of Review.

SUMMARY: Export Trading Company Affairs (''ETCA''), International Trade Administration, Department of Commerce, has received an application from The Great Lakes Fruit Exporters Association, LLC (''GLFEA'') to amend its Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Export Trading Company Affairs, International

Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7021–B H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 03-A0007''.

The Great Lakes Fruit Exporters Association's original Certificate was issued on December 15, 2003 (69 FR 8382, February 24, 2004). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Great Lakes Fruit Exporters Association, LLC, 4949 North Branch Road, Benton Harbor, Michigan 49022.

Contact: Denise Yockey, Secretary/Treasurer. Telephone: (517) 669–8353.

Application No.: 03–A0007.

Date Deemed Submitted: August 9, 2005.

Proposed Amendment: GLFEA seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of § 325.2(l) of the Regulations (15 CFR 325.2(l)): Michigan Fresh Marketing, LLC, Belding, Michigan (controlling entity: Heeren Brothers, Inc., Grand Rapids, Michigan).

Dated: August 16, 2005.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E5–4561 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the MONITOR National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The MONITOR National Marine Sanctuary (MNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Recreational Diving; Maritime Archaeological Research; Conservation; Education; Heritage Tourism; and Citizen-at-Large.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve 2-year terms, pursuant to the Council's Charter.

DATES: Applications are due by September 30, 2005.

ADDRESSES: Application kits may be obtained from: Krista Trono, MONITOR National Marine Sanctuary, 100 Museum Drive, Newport News, VA 23602. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Krista Trono, Communications Coordinator, MONITOR National Marine Sanctuary, 100 Museum Drive Newport News, Va 23602. (757) 591–7328, Fax: (757) 591–7353, *Krista.Trono@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MNMS Advisory Council will be established in 2005 and representation will consist of eleven members, including four government agency representatives and seven members from the general public. The Council functions in an advisory capacity to the Sanctuary Manager. The Council works in concert with the Sanctuary Manager by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Manager in achieving the goals of the Sanctuary program. Specifically, the Council's objectives are to provide advice on: (1) Protecting cultural resources, and identifying and evaluating emergent or critical issues involving Sanctuary use or resources; (2) Identifying and realizing the Sanctuary's research objectives; (3) Identifying and realizing educational opportunities to increase the public knowledge and stewardship of the Sanctuary environment; and (4) Assisting to develop an informed constituency to increase awareness and understanding of the purpose and value of the Sanctuary and the National Marine Sanctuary Program.

Authority: 16 U.S.C. Sections 1431, *et seq.*

Dated: August 12, 2005.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 05–16622 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet September 13, 2005.

Date and Time: The meeting is scheduled as follows: September 13, 2005, 8:30 a.m.–5 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 1 p.m.

ADDRESSES: The meeting will be held in Room Continental C of the Ronald Reagan Building and International Trade Center, Washington, DC. The

Reagan Building is located at 1300 Pennsylvania Avenue, NW., Washington, DC 20004. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in Sunshine Act, Pub. L. 94–409 and in accordance with Section 552b(c)(1) of Title 5, United States Code. Accordingly, portions of this meeting which involve the ongoing review and implementation of the April 2003 U.S. Commercial Remote Sensing Space Policy and related national security and foreign policy considerations for NOAA's licensing decisions may be closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order.

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will discuss NOAA Planning, Programming, Budgeting, and Execution System, licensing coordination activities, and commercialization and privatization issues. The committee will also receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Michael Hales, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Tahara Moreno at (301) 713–2024 ext. 202, fax (301) 713–2032, or e-mail *Tahara.Moreno@noaa.gov*.

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before September 6, 2005, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Hales, NOAA/NESDIS International and Interagency Affairs, 1335 East West Highway, Room 7313, Silver Spring, Maryland 20910; telephone (301) 713–2024 x220, fax (301) 713–2032, e-mail *Michael.Hales@noaa.gov*, or Tahara Moreno at telephone (301) 713–2024 x202, e-mail *Tahara.Moreno@noaa.gov*.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 05–16532 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081505A]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Plan Team will meet in Anchorage, AK.

DATES: The meeting will be held on September 7–9, 2005. The meeting will begin on Wednesday, September 7, from 9 a.m. to 5 p.m., and continue on Thursday, September 8, from 9 a.m. to 5 p.m., and Friday, September 9, from 9 a.m. to 2 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, Lupine Room, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following: Update on Information Quality Act relevance to Crab Plan Team role in reviewing stock assessment products, Review of state/federal action plan, Review summer research including: NMFS survey, Bering Sea Fishery Research Foundation survey; snow crab tagging results. Model and assessment results on Golden King crab, Red King crab and Snow crab. Review Status of stocks, stock status relative to overfishing, and current harvest strategies, state annual management reports, review, revise, compile Stock Assessment Fishery Evaluation Report. Review progress on revised overfishing definitions, Bairdi Tanner crab harvest strategy and rebuilding plan, review membership issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 17, 2005.

Emily Menashes,

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

[FR Doc. E5–4557 Filed 8–19–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0053]

Federal Acquisition Regulation; Information Collection; Permits, Authorities, or Franchises Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning permits, authorities, or franchises certification. A request for public comments was published in the **Federal Register** at 70 FR 29288 on May 20, 2005. No comments were received. The clearance currently expires on October 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 21, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

This certification and copies of authorizations are needed to determine that the offeror has obtained all authorizations, permits, etc., required in connection with transporting the material involved. The contracting officer reviews the certification and any documents requested to ensure that the offeror has complied with all regulatory requirements and has obtained any permits, licenses, etc., that are needed.

B. Annual Reporting Burden

Respondents: 1,106.

Responses Per Respondent: 3.

Annual Responses: 3,318.

Hours Per Response: .094.

Total Burden Hours: 312.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0053, Permits, Authorities, or Franchises Certification, in all correspondence.

Dated: August 16, 2005.

Julia B. Wise,

Director,Contract Policy Division.

[FR Doc. 05–16545 Filed 8–19–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University (DAU), DOD.

ACTION: Board of Visitors meeting (BoV).

SUMMARY: The next meeting of the DAU BoV will be held at DAU Mid-West Region in Kettering, Ohio. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 15, 2005 from 0900–1500.

ADDRESSES: 3100 Research Blvd, Kettering, Ohio 45420.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Cizmadia at (703) 805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Patricia Cizmadia at (703) 805–5134.

Dated: August 16, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16508 Filed 8–19–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Correction

AGENCY: Department of Defense (DoD).

ACTION: Notice; correction.

SUMMARY: On Friday, May 20, 2005 (70 FR 29290) the Department of Defense announced open meetings of the Defense Science Board (DSB) Task Force on Manufacturing Technology. The September 2005 meeting dates have been revised from September 21–22, 2005 to September 22, 2005 only. The task force will meet in closed session. The meeting will be held at Strategic Analysis Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: LTC Scott Dolgoff, USA Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *scott.dolgoff@osd.mil,* or via phone at (703) 571–0087.

Correction

In the **Federal Register** of May 20, 2005, in FR Doc. 05–10158, on page 29290, in the column, correct the **SUMMARY** and **DATES** caption to read:

SUMMARY: The Defense Science Board Task Force on Manufacturing Technology will meet in open session on May 24–25, 2005; July 26–27, 2005; September 22, 2005 (Closed Session); and November 2–3, 2005, at SAI, 3601 Wilson Boulevard, Arlington, VA. This Task Force will review the Department of Defense Manufacturing Technology (ManTech) Program.

DATES: September 22, 2005 (Closed Session).

Dated: August 16, 2005.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16507 Filed 8–19–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Composite Solder Technology for Exclusive, Partially Exclusive or Non-exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel Composite Solder technology as described in U.S. Patent No. 5,520,752; entitled ''Composite Solders''; May 28, 1996; Lucey, *et al.* Any license shall comply with 35 U.S.C. 209 and 37 CFR part 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 434. Aberdeen Proving Ground, MD 21005–5425, telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–16540 Filed 8–19–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Hudson-Raritan Estuary, Liberty State Park Ecosystem Restoration Study, Hudson County, NJ

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the proposed ecosystem restoration at Liberty State Park, Hudson County, NJ. This DEIS has been prepared in accordance with the National Environmental Policy Act (NEPA), and U.S. Army Corps of Engineers (USACE) regulations for implementing NEPA.

DATES: The comment period for the DEIS will end 45 days after publication of the notice in the **Federal Register** by the U.S. Environmental Protection Agency. The end date falls within the first week of October 2005.

ADDRESSES: To obtain copies of the DEIS or submit comments, contact Mr. Robert Will, Environmental Coordinator, U.S. Army Corps of Engineers, New York District, Planning Division—Environmental Analysis Branch, 26 Federal Plaza, Room 2151, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Will, Planning Division—Environmental Analysis Branch, at (917) 790–8635, or *robert.j.will@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns regarding the proposed ecosystem restoration at Liberty State Park, Hudson County, NJ. The restoration of the 234 acre interior section, currently fenced off and inaccessible, will provide substantial benefit to all 1,121 acres of Liberty State Park by linking previously developed and restored, but isolated, components of the park into one cohesive whole. The study was conducted under the authority of a resolution adopted by the Committee on Transportation and Infrastructure of the U.S. House of Representatives on April 15, 1999, Docket 2596:

Resolved by the Committee on Transportation and Infrastructure of the United States House of Representatives, That, the Secretary of the Army is requested to review the reports of the Chief of Engineers on the New York and New Jersey Channels, published as House Document 133, 74th Congress, 1st Session; the New York and New Jersey Harbor Entrance Channels and Anchorage Areas, published as Senate Document 45, 84th Congress, 1st Session; and the New York Harbor, NY Anchorage Channel, published as House Document 18, 71st Congress, 2nd Session, as well as other related reports with a view to determining the feasibility of environmental restoration and protection relating to water resources and sediment quality within the New York and New Jersey Port District, including but not limited to creation, enhancement, and restoration of aquatic, wetland, and adjacent upland habitats.

The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns bearing on the proposed action or its anticipated impacts. The analysis indicates that short-term adverse environmental impacts, such as construction effects, would be balanced by long-term beneficial impacts. Monitoring for Cultural and Biological resources will be coordinated with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the New Jersey Historic Preservation Office. All activity associated with the project would be undertaken in a way to minimize adverse impacts to sensitive habitats and threatened and endangered species, and adjacent shorelines, as well as to minimize cumulative impacts.

The Notice of Intent (NOI) was filed in June of 2004. A Public Scoping Meeting was held in October 2002 and the results were collected in a Public Scoping Document. Results from public and agency scoping coordination are addressed in the DEIS. Copies of the DEIS are also available at the Jersey City Free Public Library, Main Library and Pavonia Branch Library.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–16538 Filed 8–19–05; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement for the Montauk Point Storm Damage Reduction Project, Suffolk County, NY

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Draft Environmental Impact Statement (DEIS) which assesses the potential environmental impacts of the proposed reinforcement of an existing stone revetment wall at Montauk Point, Suffolk County, NY. The DEIS has been prepared in accordance with the National Environmental Policy Act (NEPA), and U.S. Army Corps of Engineers (USACE) regulations for implementing NEPA.

DATES: The comment period for the DEIS will end 45 days after publication of the notice in the **Federal Register** by the U.S. Environmental Protection Agency. The end date falls within the first week of October 2005.

ADDRESSES: To obtain copies of the DEIS or submit comments, contact Dr. Christopher Ricciardi, Environmental Coordinator, U.S. Army Corps of Engineers, New York District, Planning Division—Environmental Analysis Branch, 26 Federal Plaza, Room 2151, New York, NY 10278–0090.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Ricciardi, Planning Division—Environmental Analysis Branch, at (917) 790–8630 or *christopher.g.ricciardi@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns regarding the proposed reinforcement of an existing stone revetment wall at Montauk Point, NY. The U.S. Coast Guard and the Montauk Historical Society constructed the current revetment wall between 1990 and 1992. The project study was conducted under the authority of resolution adopted by the Committee on Environment and Public Works of the U.S. Senate on May 15, 1991.

Resolved by the Committee on Environment and Public Works of the United States Senate, that the Secretary of the Army is hereby requested to review the report of the Chief of Engineers on Fire Island to Montauk Point, New York, published as House Document Number 86–425, 86th Congress, 2nd session, and other pertinent reports, to determine whether modifications of the recommendations contained therein are advisable at the present time, with a view to preserving, restoring, and protecting Montauk Point and vicinity, including the historic Montauk Lighthouse and associated facilities, from erosion, environmental degradation, and coastal storm damage.

The purpose of this DEIS is to analyze significant issues and information relevant to environmental concerns bearing on the proposed action or its anticipated impacts. The analysis indicates that short-term adverse environmental impacts, such as removal of benthic invertebrates in the revetment wall area, would be balanced by long-term beneficial impacts. Monitoring for Cultural and Biological resources will be coordinated with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the New York State Office of Parks, Recreation and Historic Preservation. All activity associated with the project would be undertaken in a way to minimize adverse impacts to sensitive habitats and threatened and endangered species, and adjacent shorelines, as well as to minimize cumulative impacts.

A 404(b)(1) evaluation has been prepared for the project and is included in the DEIS. The proposed action and alternatives do not represent a significant threat of degradation to the aquatic environment, and are in compliance with the 404(b)(1) Guidelines.

The Notice of Intent (NOI) was filed in May of 2002. A Public Scoping Meeting was held in November 2001 and the results were collected in a Public Scoping Document. Results from public and agency scoping coordination are addressed in the DEIS. Copies of the DEIS are also available at the East Hampton Library and the Montauk Point Library.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–16539 Filed 8–18–05; 8:45 am]

BILLING CODE 3710–06–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 21, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Intergovernmental and Interagency Affairs

Type of Review: Revision.

Title: No Child Left Behind—Blue Ribbon Schools Program.

Frequency: One time.

Affected Public: State, local, or tribal gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 413.

Burden Hours: 16,520.

Abstract: The purpose of the program is to recognize and present as models elementary and secondary schools in the United States with high numbers of students from disadvantaged backgrounds that dramatically improve student performance to a high level on state or nationally-normed assessments and to recognize schools whose students achieve in the top 10 percent on state or nationally-normed assessments.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2862. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@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. 05–16510 Filed 8–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Graduate Assistance in Areas of National Need; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.200A

DATES: *Applications Available:* August 29, 2005.

Deadline for Transmittal of Applications: November 14, 2005.

Deadline for Intergovernmental Review: January 16, 2006.

Eligible Applicants: Academic departments of institutions of higher education that meet the requirements in 34 CFR 648.2.

Estimated Available Funds: The Administration has requested $20,340,000 for new awards under this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $126,000—$253,000.

Estimated Average Size of Awards: $211,000.

Estimated Number of Awards: 96.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides fellowships in areas of national need to assist graduate students with excellent academic records who demonstrate financial need and plan to pursue the highest degree available in their courses of study.

Priority: In accordance with 34 CFR 75.105(b)(2)(ii), this priority is from the regulations for this program (34 CFR 648.33(a) and Appendix to Part 648—Academic Areas).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Areas of National Need

A project must provide fellowships in one or more of the following areas of national need: Biology, chemistry, computer and information sciences, engineering, geological and related sciences, mathematics, nursing, and physics.

Within this absolute priority the Secretary is particularly interested in applications that address the following invitational priority:

Invitational Priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

A nursing program that focuses on the preparation of nurse scholars at the PhD level for educational leadership roles. Graduates of this type of program will become the teachers preparing students for careers in nursing, and will disseminate to the public new knowledge gained from disciplined inquiry related to nursing and nursing education.

Program Authority: 20 U.S.C. 1135.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 648.

II. Award Information

Type of Award: Discretionary grants, redistributed as fellowships to individual fellows.

Estimated Available Funds: The Administration has requested $20,340,000 for new awards under this program for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $126,000–$253,000.

Estimated Average Size of Awards: $211,000.

Estimated Number of Awards: 96.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Stipend Level: The Secretary will determine the fellowship stipend for Graduate Assistance in Areas of National Need for the academic year 2006–2007 based on the level of support provided by the graduate fellowships of the National Science Foundation as of February 1, 2006. However, the Secretary will adjust the amount, as necessary, so as not to exceed the fellow's demonstrated level of financial need as calculated for purposes of the Federal student financial aid programs under Title IV, part F of the Higher Education Act of 1965, as amended.

Institutional Payment: The Secretary will determine the institutional payment for the academic year 2006–2007 by adjusting the previous academic year institutional payment, which is $11,822 per fellow, by the U.S. Department of Labor's Consumer Price Index for the 2005 calendar year.

III. Eligibility Information

1. *Eligible Applicants:* Academic departments of institutions of higher education that meet the requirements in 34 CFR 648.2.

2. *Cost Sharing or Matching:* This program involves matching (See 34 CFR 648.7).

3. *Other:* For requirements relating to selecting fellows, see 34 CFR 648.40.

IV. Application and Submission Information

1. *Address To Request Application Package:* Applications can only be accessed electronically on the Graduate Assistance in Areas of National Need Web site: *http://www.ed.gov/programs/gaann/applicant.html.*

An applicant who is unable to obtain an electronic copy of the application package may submit a written request to obtain a hard copy. 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 request to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written request to the Department, we must receive the faxed request no later than two weeks before the application deadline date.

Address and mail or fax your request to: Rebecca Green, U.S. Department of Education, 1990 K Street, NW., room 6096, Washington, DC 20006–8524. Fax (202) 502–7859.

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 a copy of the application package in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III as follows:

An application in a single discipline must be limited to the equivalent of no more than 40 pages.

An interdisciplinary application must be limited to the equivalent of no more than 60 pages. An interdisciplinary application must request funding for a single proposed program of study that involves two or more academic disciplines.

A multidisciplinary application must be limited to the equivalent of no more than 40 pages for each academic discipline included in the proposal. A multidisciplinary application must request funding for two or more proposed programs of study that are independent and unrelated to one another.

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs. Charts, tables, figures, and graphs presented in the application narrative count toward the page limit.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• You may use a 10-point font in charts, tables, figures, graphs, footnotes, and endnotes. However, these items are included as part of the narrative and counted within the specified page limit.

• Use one of the following fonts: Times New Roman, Courier, Courier New or Arial. Applications submitted in any other font (including Times Roman, Arial Narrow) will not be accepted.

• Appendices are limited to the following: Curriculum vitae—no more than two pages per faculty member; a course listing; letters of support; bibliography; and one additional optional appendix relevant to the support of the proposal, not to exceed five pages.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section; the assurances and certifications; the one-page abstract; or the appendices. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: August 29, 2005.

Deadline for Transmittal of Applications: November 14, 2005.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: January 16, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We specify unallowable costs in 34 CFR 648.64. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically, unless you qualify for an exception to this requirement in accordance with the instructions in this section.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

a. *Electronic Submission of Applications*. Applications for grants under the Graduate Assistance in Areas of National Need Competition—CFDA Number 84.200A must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov*.

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information Sheet, and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Cosette Ryan, U.S. Department of Education, 1990 K Street, NW., room 6008, Washington, DC 20006–8521. Fax: (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.200A), 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 84.200A), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.200A), 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 are in 34 CFR 648.31.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are in 34 CFR 648.32.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy

requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118 and in 34 CFR 648.66.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), three measures have been developed for evaluating the overall effectiveness of the Graduate Assistance in Areas of National Need program: (1) The percentage of fellows in the Graduate Assistance in Areas of National Need program who obtain a terminal degree in an area of national need, compared to the national average; (2) the percentage of fellows in the Graduate Assistance in Areas of National Need program from traditionally underrepresented populations who obtain a terminal degree in an area of national need, compared to the national average; and (3) the median duration of time from entering graduate school until degree completion compared to comparable doctoral students as identified annually in the Survey of Earned Doctorates.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Cosette Ryan, U.S. Department of Education, Graduate Assistance in Areas of National Need Program, 1990 K Street NW., room 6008, Washington, DC 20006–8521. Telephone: (202) 502–7637 or by e-mail: *ope_gaann@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 person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: August 17, 2005.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–16607 Filed 8–19–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Order Vacating Authorizations

AGENCY: Office of Fossil Energy (FE), Department of Energy (DOE).

ACTION: Notice of vacating orders.

SUMMARY: DOE is vacating unused natural gas import and export authorizations.

FOR FURTHER INFORMATION CONTACT: Larine Moore, Allyson C. Reilly, Office of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, P.O. Box 44375, Washington, DC 20026–4375. (202) 586–9478. (202) 586–9394.

SUPPLEMENTARY INFORMATION: DOE's FE is delegated the authority to regulate natural gas import and export under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. Persons seeking to import or export natural gas are required to file with FE an application containing basic information about the scope and nature of a proposed import or export. Most applications are approved automatically and the orders granting approval require those authorized to report import and export activity on a periodic basis. The data collected is used to monitor the North American natural gas trade and facilitate market analysis.

Over the years many two-year, blanket authorizations have been issued with no start date and terms to be triggered by reporting activity. There has been no reported activity for some of these outstanding authorizations, and more often than not FE attempts to contact authorization holders have been unsuccessful. FE is vacating these authorizations in order to remove unused authorizations from the FE database and improve information collection and trade monitoring.

Order

In accordance with DOE policy and pursuant to section 3 of the Natural Gas Act, it is ordered that the authorizations listed in the attached Appendix are vacated effective the date of the issuance of this notice.

Issued in Washington, DC, August 5, 2005.

R.F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

Appendix—Authorizations To Be Vacated

Docket No.	Order No.	Importer/exporter	Date issued
85–28–NG	101	Citizens Energy Corp. & Citizens Resources Corp.	14–Jan–86
86–2–NG	115	Carson Water Company	25–Mar–86
86–15–NG	121	282126 Alberta Inc	15–May–86
86–15–NG	121–A	282126 Alberta Inc	13–May–87
86–15–NG	121–B	282126 Alberta Inc	06–May–88
86–17–NG	120	Community Gas Acquisition, Inc	15–May–86
86–30–NG	134	ANR–TransCanada Energy Company	03–Jul–86

Docket No.	Order No.	Importer/exporter	Date issued
86–49–NG	150	Cepex, Inc	30–Oct–86
86–59–NG	162	Forest Marketing Corporation	30–Jan–87
87–1–NG	175	Quintana Minerals Corporation	01–Jun–87
87–5–NG	170	Eastex Canadian, Inc	30–Apr–87
87–9–NG	173	Tex-ana Gas Company	15–May–87
87–18–NG	183	Portage Energy Inc	21–Jul–87
87–18–NG	183–A	Portage Energy Inc	16–Feb–93
87–45–NG	215	Continental Natural Gas, Inc	15–Jan–88
87–62–NG	221	JDS Energy Corporation	28–Jan–88
87–65–NG	226	MG Natural Gas Corporation	24–Feb–88
87–70–NG	230	Dynasty Gas Marketing, Inc	08–Mar–88
88–10–NG	242	Woodward Marketing, L.L.C.	02–Jun–88
88–10–NG	242–A	Woodward Marketing, L.L.C.	13–Aug–96
88–11–NG	262	Northeast Gas, Inc	04–Aug–88
88–13–NG	257	Pentex Petroleum, Inc	26–Jul–88
88–17–NG	253	National Energy Systems, Inc	11–Jul–88
88–18–NG	247	Reliance Gas Marketing Company	22–Jun–88
88–60–NG	291	Gas Masters, Inc	30–Dec–88
89–6–NG	313	Gas Masters, Inc	28–Apr–89
89–35–NG	328	Potomac Energy Corporation	24–Aug–89
94–45–NG	955	Southwest Gas Corporation	08–Jun–94
01–31–NG	1695	Coral Canada U.S. Inc	19–Jun–01

[FR Doc. 05–16556 Filed 8–19–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 05–51–NG, 05–52–NG, 05–42–NG, 05–46–NG, 05–53–LNG, 05–47–NG, 97–03–NG, 97–48–NG, 97–36–NG, 96–52–NG, 95–104–NG, 97–37–NG, 96–50–NG, 04–06–NG, 05–54–NG, 05–55–NG, 05–45–LNG, 05–56–NG, 03–70–NG, 04–04–LNG, 05–42–NG]

Office of Fossil Energy; ConocoPhillips Energy Marketing Corp., OXY Energy Canada, LC, Calpine Energy Services, L.P., ECOGAS Mexico, Kinetic LNG, Pacific Summit Energy LLC, Engage Energy America L.L.C., Engage Energy America L.L.C., Engage Energy America L.L.C., Engage Energy America L.L.C., Engage Energy America L.L.C., Coastal Gas Marketing Company, Chevron U.S.A. Inc., Ontario Energy Savings L.P., Eagle Energy Marketing Canada L.P., Excelerate Gas Marketing, LLC, ONEOK Energy Services Company, L.P., Ontario Energy Savings Corp., Excelerate Energy L.P., Calpine Energy Services, L.P.; Orders Granting Authority To Import and Export Natural Gas, Including the Import of Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during July 2005, it issued Orders granting and vacating authority to import and export natural gas, including the import of liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation). They are also available for inspection and copying in the Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 5, 2005.

R. F. Corbin,

Manager, Natural Gas Regulatory Activities, Office of Oil and as Global Security and Supply, Office of Fossil Energy.

Appendix—Orders Granting Import/Export Authorizations DOE/FE Authority

Order No.	Date issued	Importer/exporter FE docket no.	Import volume	Export volume	Comments
2108	7–12–05	ConocoPhillipsEnergy Marketing Corp. 05–51–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 12, 2005, and extending through July 11, 2007.

Order No.	Date issued	Importer/exporter FE docket no.	Import volume	Export volume	Comments
2109	7–14–05	OXY Energy Canada, LLC 05–52–NG.	400 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on September 1, 2005, and extending through August 31, 2007.
2110	7–20–05	Calpine Energy Services, L.P. 05–42–NG.	300 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on July 1, 2005, and extending through June 30, 2007.
2111	7–20–05	ECOGAS Mexico 05–46–NG.	19 Bcf	19 Bcf	Import natural gas from Canada, and export natural gas to Mexico, beginning on July 20, 2005, and extending through July 19, 2007.
2112	7–20–05	Kinetic LNG 05–53–LNG.	200 Bcf	.....	Import LNG from other international sources, beginning on September 1, 2005, and extending through August 31, 2007.
2113	7–20–05	Pacific Summit Energy LLC 05–47–NG.	24 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on August 1, 2005, and extending through July 31, 2007.
1253–D	7–20–05	Engage Energy America L.L.C. 97–03–NG.	.....	.....	Vacate long-term import authority.
1332–D	7–20–05	Engage Energy America L.L.C. 97–48–NG.	.....	.....	Vacate long-term import authority.
1275–D	7–20–05	Engage Energy America L.L.C. 97–36–NG.	.....	.....	Vacate long-term import authority.
1202–D	7–20–05	Engage Energy America L.L.C. 96–52–NG.	.....	.....	Vacate long-term import authority.
1228–D	7–20–05	Engage Energy America L.L.C. 97–03–NG.	.....	.....	Vacate long-term import authority.
1282–D	7–20–05	Engage Energy America L.L.C. 97–03–NG.	.....	.....	Vacate long-term import authority.
1201–A	7–20–05	Coastal Gas Marketing Company 96–50–NG.	.....	.....	Vacate long-term import authority.
1938–A	7–20–05	Chevron U.S.A. Inc. 04–06–NG.	.....	.....	Vacate blanket export authority.
2114	7–29–05	Ontario Energy Savings L.P. 05–54–NG.	200 Bcf	200 Bcf	Import and export natural gas from and to Canada, beginning on August 1, 2005, and extending through July 31, 2007.
2115	7–29–05	Eagle Energy Marketing Canada, L.P. 05–55–NG.	70.6 Bcf	70.6 Bcf	Import and export natural gas from and to Canada, beginning on May 1, 2005, and extending through April 30, 2007.
2116	7–29–05	Excelerate Gas Marketing, LLC 05–45–LNG.	400 Bcf	.....	Import LNG from various international sources, beginning on July 1, 2005, and extending through June 30, 2007.
2117	7–29–05	ONEOK Energy Services Company, L.P. 05–56–NG.	300 Bcf		Import and export a combined total of natural gas, including LNG from and to Canada and Mexico, and import LNG from various other international sources, beginning August 1, 2005, and extending through July 31, 2007.
1914–A	7–29–05	Ontario Energy Savings Corp. 03–70–NG.	.....	.....	Vacate blanket import and export authority
1939–A	7–29–05	Excelerate Energy L.P. 04–04–LNG.	.....	.....	Vacate blanket import LNG authority.
2110	7–29–05	Calpine Energy Services, L.P. 05–42–NG.	.....	.....	Errata: Term of the authority inadvertently stated as July 1, 2005, and extending through June 30, 2007. Corrected term to state ''July 1, 2004, and extending through June 30, 2006.''

[FR Doc. 05–16557 Filed 8–19–05; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER05–1311–000]

Southern California Edison Company; Notice of Filing

August 16, 2005.

Take notice that on July 8, 2005, Southern California Edison Company (SCE) submitted for filing a letter agreement between SCE and Mountainview Power Company, L.L.C.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 23, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4555 Filed 8–19–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 16, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: *ER05–1306–000.*
Applicants: Westar Energy, Inc.
Description: *Westar Energy, Inc submits a Notice of Cancellation of an Electric Power Supply Agreement between Westar and the City of Chapman, Kansas, designated as Rate Schedule No. 231.*
Filed Date: 08/08/2005.
Accession Number: *20050811–0162.*
Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: *ER05–1315–000.*
Applicants: North Western Energy.
Description: *NorthWestern Corporation d/b/a NorthWestern Energy submits an amendment to the Firm Point-to-Point Transmission Service Agreement No. 10–SD under NorthWestern Energy's OATT Original Volume No. 2, between the Town of Langford, South Dakota and NorthWestern Energy.*
Filed Date: 08/11/2005.
Accession Number: *20050815–0219.*
Comment Date: 5 p.m. eastern time on Thursday, September 01, 2005.

Docket Numbers: *ER05–1316–000.*
Applicants: Kumeyaay Wind LLC.
Description: *Kumeyaay Wind LLC submits an application for market-based rate authority under section 205 of the Federal Power Act, and request for expedited consideration and for waivers and pre-approvals.*
Filed Date: 08/11/2005.
Accession Number: *20050815–0220.*
Comment Date: 5 p.m. eastern time on Thursday, September 01, 2005.

Docket Numbers: *ER05–1319–000.*
Applicants: Pacific Gas and Electric Company.
Description: *Pacific Gas and Electric Company submits an amendment to its Wholesale Distribution Tariff, FERC Electric Tariff, First Revised Volume No. 4.*
Filed Date: 08/12/2005.
Accession Number: *20050815–0266.*
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: *ER05–1321–000.*
Applicants: Portland General Electric Company.
Description: *Portland General Electric Company submits revisions to its Pro Forma Open Access Transmission Tariff.*
Filed Date: 08/12/2005.
Accession Number: *20050815–0215.*
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: *ER05–1323–000.*
Applicants: Northeast Utilities Service Company.
Description: *Northeast Utilities Service Company on behalf of its transmission-owning affiliates submits a Notice of Cancellation of NU Companies Service Agreement 27 under ISO New England, Inc. FERC Electric Tariff No. 3 Attachment E, Schedule 21–NU and First Revised Service Agreement No. 1 IA–NU–5.*
Filed Date: 08/11/2005.
Accession Number: *20050815–0237.*
Comment Date: 5 p.m. eastern time on Thursday, September 01, 2005.

Docket Numbers: *ER05–1324–000.*
Applicants: San Diego Gas & Electric Company.
Description: *San Diego Gas & Electric Company submits revisions to its FERC Electric Tariff, Original Volume No. 5.*
Filed Date: 08/12/2005.
Accession Number: *20050815–0267.*
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies

of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4556 Filed 8–19–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for the disbursement of $1,585,576.76, plus accrued interest, in crude oil overcharges obtained by the DOE concerning BPM Ltd., Case No. TEF–0001, Honeymon Drilling Co., Case No. TEF–0002, Intercontinental Oil, Case No. TEF–0003, Knox Oil, Case No. TEF–0004, Pescar Trading, Case No. TEF–0005, Shepherd Oil, Inc., Case No. TEF–0007, Sierra Petroleum Co., Case No. TEF–0008, Thriftway Co., Case No. TEF–0010, and Western Refining Co. (Robert J. Martin), Case No. TEF–0011.

FOR FURTHER INFORMATION CONTACT: Richard A. Cronin, Jr., Assistant Director, Office of Hearings and Appeals, 1000 Independence Ave., SW., Washington, DC 20585–1615, (202) 287–1589, *richard.cronin@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,585,576.76, plus accrued interest, obtained by the DOE from BPM Ltd., Honeymon Drilling Co., Intercontinental Oil, Knox Oil, Pescar Trading, Shepherd Oil, Inc., Sierra Petroleum Co., Thriftway Co., and Western Refining Co. (Robert J. Martin).

The OHA will distribute these funds in the currently-existing crude oil refund proceeding described in the Decision and Order. Because the deadline for filing crude oil refund applications has passed, no new applications for refund for the alleged (or established) crude oil pricing violations of the listed firms will be accepted for these funds.

Dated: August 16, 2005.

George B. Breznay,

Director, Office of Hearings and Appeals.

Decision and Order

Department of Energy

Implementation of Special Refund Procedures

Names of Firms: BPM Ltd., Honeymon Drilling Co., Intercontinental Oil, Knox Oil, Pescar Trading, Shepherd Oil, Inc., Sierra Petroleum Co., Thriftway Co., Western Refining Co. (Robert J. Martin).

Date of Filing: June 21, 2005.

Case Numbers: TEF–0001, TEF–0002, TEF–0003, TEF–0004, TEF–0005, TEF–0007, TEF–0008, TEF–0010, TEF–0011.

I. Background

The Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 CFR 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by the following firms pursuant to administrative or judicial decisions or in settlement of the DOE allegations that the firms had violated the DOE petroleum price control and allocation regulations: BPM Ltd., Honeymon Drilling Co., Intercontinental Oil, Knox Oil, Pescar Trading, Shepherd Oil, Inc., Sierra Petroleum Co., Thriftway Co., Western Refining Co. (Robert J. Martin).

In its Petition, OGC states that is has been unable to reasonably identify persons harmed as a result of these firms' alleged violations, or to reasonably ascertain the amount of the refund to any person that might have been harmed. We therefore have determined that the refund procedures requested by OGC are appropriate.

A total of $1,585,576.76 has been remitted to DOE by these firms to remedy violations that occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds.

II. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 CFR part 205, subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement,* 9 DOE ¶ 82,508 (1981) and *Office of Enforcement,* 8 DOE ¶ 82,597 (1981).

On June 28, 2005, the OHA issued a Proposed Decision and Order (PD&O) establishing tentative procedures to distribute the funds remitted. That PD&O was published in the **Federal Register**, and a 30-day period was provided for the submission of comments regarding our proposed refund plan. *See* 70 FR 38901 (July 6, 2005). More than 30 days have elapsed and OHA has received no comments concerning these proposed refund procedures. Consequently, the procedures will be adopted as proposed.

III. Refund Procedures

A. Allocation of Remitted Funds

The alleged violations by the above-named firms all concerned the sale of crude oil. Under these circumstances, all of the funds remitted will be allocated for restitution for parties injured by the firms' alleged violations of the crude oil regulations.

B. Refund Procedures for Crude Oil Violations

The funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases, (MSRP), *see* 51 FR 27899 (August 4, 1986). Pursuant to the MSRP, OHA may reserve up to 20 percent of those funds for direct refunds to applicants who claim that they were injured by the crude oil violations. The

remaining funds are distributed to the States and Federal government for indirect restitution. We will distribute the funds remitted in accordance with the MSRP, which was issued as a result of the Settlement Agreement approved by the court in *The Department of Energy Stripper Well Exemption Litigation,* 653 F. Supp. 108 (D. Kan. 1986). Shortly after the issuance of the MSRP, the OHA issued an Order that announced that this policy would be applied in all subpart V proceedings involving alleged crude oil violations. *See* Order Implementing the MSRP, 51 FR 29,689 (August 20, 1986) (the August 1986 Order).

Under the MSRP, 40 percent of crude oil overcharge funds will be disbursed to the Federal government, another 40 percent to the states, and up to 20 percent may initially be reserved for the payment of claims to injured parties. The MSRP also specified that any funds remaining after all valid claims by injured purchasers are paid will be disbursed to the Federal government and the States in equal amounts.

In April 1987, the OHA issued a Notice analyzing the numerous comments received in response to the August 1986 Order. 52 FR 11,737 (April 10, 1987) (April 10 Notice). This Notice provided guidance to claimants that anticipated filing refund applications for crude oil monies under the subpart V regulations. In general, we stated that all claimants would be required to (1) document their purchase volumes of petroleum products during the August 19, 1973 through January 27, 1981 crude oil price control period, and (2) prove that they were injured by the alleged crude oil overcharges. Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations would be presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users would not need to submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *See City of Columbus Georgia,* 16 DOE ¶ 85,550 (1987).

1. Individual Refund Claims

The amount of money obtained from the listed firms intended for restitution of crude oil violations is $1,585,576.76 plus accrued interest. In accordance with the MSRP, we shall initially reserve 20 percent of those funds ($317,115.36 plus accrued interest) for direct refunds to applicants who claim that they were injured by crude oil overcharges. We shall base refunds on a volumetric amount which has been calculated in accordance with the methodology described in the April 10 Notice. That volumetric refund amount is currently $0.0016 per gallon. *See* 57 FR 15562 (March 24, 1995). On May 13, 2004, we announced final procedures for the distribution of the remaining crude oil overcharge funds held by DOE, and estimated that all remaining funds would result in an additional volumetric refund amount of $0.00072 per gallon. *See* 69 FR 29300 (May 21, 2004).

The filing deadline for refund applications in the crude oil refund proceeding was June 30, 1994. This was subsequently changed to June 30, 1995. See Filing Deadline Notice, 60 FR 19914 (April 20, 1995); *see also* DMLP PDO, 60 FR 32004, 32007 (June 19, 1995). Because the June 30, 1995, deadline for crude oil refund applications has passed, no new applications for restitution from purchasers of refined petroleum products based on the alleged (or established) crude oil pricing violations will be accepted for these funds. Instead, these funds will be added to the general crude oil overcharge pool used for direct restitution.

2. Payments to the States and Federal Government

Under the terms of the MSRP, the remaining 80 percent of the crude oil violation amounts subject to this Decision, or $1,268,461.40 plus accrued interest, should be disbursed in equal shares to the States and Federal Government, for indirect restitution. Refunds to the states will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Settlement Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

Accordingly, we will direct the DOE's Office of the Controller to transfer one-half of that amount, or $634,230.70 plus interest, into an interest bearing subaccount for the states, and one-half or $634,230.70 plus interest, into an interest bearing subaccount for the Federal government.

It Is Therefore Ordered That:

(1) The Director of Special Accounts and Payroll, Office of Departmental Accounting and Financial Systems Development, Controller's Office, Department of Energy, shall take all steps necessary to transfer the funds remitted by the 9 firms listed in the Appendix to this determination, plus accrued interest, pursuant to Paragraphs (2), (3), and (4) below.

(2) The Director of Special Accounts and Payroll shall transfer $634,230.70, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-States,'' Account No. 999DOE003W.

(3) The Director of Special Accounts and Payroll shall transfer $634,230.70, plus 40 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Federal,'' Account No. 999DOE002W.

(4) The Director of Special Accounts and Payroll shall transfer $317,115.36, plus 20 percent of all accrued interest on the funds referenced in Paragraph (1) above, into the subaccount denominated ''Crude Tracking-Claimants 4,'' Account No. 999DOE010Z.

Dated: August 16, 2005.

George B. Breznay,
Director, Office of Hearings and Appeals.

APPENDIX

Name of firm	OHA case no.	Consent order tracking system (COTS) no.	Principal
BPM, Ltd.	TEF–0001	6C0X00230W	$621,220.04
Honeymon Drilling Co., Ltd.	TEF–0002	BWBBBBBBBB	359.00
Intercontinental Oil Co., Inc.	TEF–0003	650X00282W	48,750.28
Knox Oil	TEF–0004	BLBBBBBBBB	2,989.00
Pescar International Trading Corp	TEF–0005	650X000345W	28,044.49
Shephard Oil, Inc.	TEF–0007	640X00439W	150,000.00
Sierra Petroleum Co.	TEF–0008	740C01128Z	21,939.89
Thriftway Company	TEF–0010	BCBBBBBBBB	97,380.14
Western Refining Co.	TEF–0011	N00S90458W	614,893.92

Name of firm	OHA case no.	Consent order tracking system (COTS) no.	Principal
Total			1,585,576.76

[FR Doc. 05–16555 Filed 8–19–05; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–7957–3; Docket No. OAR–2005–0157]

Conference on Air Quality Modeling

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of conference.

SUMMARY: We announce the Eighth Conference on Air Quality Modeling. Such a conference is required by section three hundred twenty of the Clean Air Act (CAA) to be held every three years. The purposes of the Eighth Conference are to provide an overview of the latest features of the new air quality models and to provide a forum for public review and comment on potential revisions to the way the Agency determines and applies the appropriate air quality models in the future.

DATES: The eighth conference will be held on September 22, 2005 from 9 a.m. to 5:30 p.m. and on September 23, 2005 from 8:30 a.m. to 5 p.m. Requests to speak at the conference should be submitted to the individual listed below by September 9, 2005. All written comments must be submitted by close of business October 24, 2005.

ADDRESSES: *Conference:* The conference will be held in the EPA Auditorium, Room C111, 109 T.W. Alexander Drive, Research Triangle Park, NC.

Comments: Submit your comments, identified by Docket ID No. OAR–2005–0157 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: *http://www.epa.gov/edocket.* Fax: 202–566–1741. Mail: OAR Docket, Environmental Protection Agency, Mailcode: B102, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies. Hand Delivery: EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Instructions: Direct your comments to Docket ID No. OAR–2005–0157. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to unit II of the **SUPPLEMENTARY INFORMATION** section of this document. Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OAR 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 OAR Docket is (202) 566–1742.

Background information: Additional information and a more detailed agenda are electronically available at *http://www.epa.gov/scram001/8thmodconf.htm.*

FOR FURTHER INFORMATION CONTACT: Warren Peters, U.S. Environmental Protection Agency, Mail Drop D243–01, T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone: (919) 541–5337; e-mail address: *peters.warren@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The *Guideline on Air Quality Models* (hereafter, called the *Guideline*, which is found in Appendix W to 40 CFR part 51), is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The *Guideline* serves as a means by which consistency is maintained in air quality analyses. We originally published the *Guideline* in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs.

To support the process of developing and revising the Guideline during the period 1977–1988, we held the First, Second and Third Conferences on Air Quality Modeling as required by Section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided us with comments on the *Guideline* and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process.

In October 1988, we held the Fourth Conference on Air Quality Modeling. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide our consideration of any rulemaking needed to further revise the Guideline. We held the Fifth Conference on Air Quality Modeling in March 1991, which served as a public hearing for the proposed revisions to the *Guideline.* In August 1995, we held the sixth conference as a forum to update our available modeling tools with state-of-the-science techniques for airing these issues and for the public to offer new ideas.

The last conference held was the Seventh Conference on Air Quality Modeling in June 28 and 29, 2000, which served as a public hearing for the proposed changes to the recommended air quality models in Appendix W. Several presentations were made, including the development of an enhanced Gaussian dispersion model with boundary layer parameterization (AERMOD [1]); the development of the CALPUFF modeling system by Earth Tech, Inc. through the Interagency Workgroup on Air Quality Modeling (IWAQM [2]); the development and testing of ISC-PRIME by the Electric Power Research Institute's building downwash program; and on revisions to the Emissions and Dispersion Modeling System (EDMS) by the Federal Aviation Administration. In addition, several presentations on models for consideration as ''alternative models'' were made and a panel of experts discussed meteorological data assimilation for the next generation of dispersion models. The proceedings are found in Docket No. A–99–05.

Public Participation

The Eighth Conference on Air Quality Modeling will be open to the public; no admission fee is charged and there is no formal registration. The conference will begin the first morning with introductory remarks by the presiding EPA official. The following topics will be presented:

I. AERMOD implementation issues;
II. CALPUFF implementation issues;
III. Assimilated meteorological data for air dispersion models;
IV. New approach for updating (revising) models;
V. Alternative approaches for selection of approved dispersion models; and,
VI. Other presentations by the public.

Those wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact us at the address given in the **FURTHER INFORMATION** section (note the cutoff date). Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and they will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the reporter. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket OAR–2005–0157 which will remain open until October 24, 2005 for the purpose of receiving additional comments.

Dated: August 17, 2005.

Mary E. Henigin,

Acting Director, Office of Air Quality Planning and Standards, Office of Air and Radiation.

[FR Doc. 05–16682 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–P

[1] *A*MS/*E*PA *R*egulatory *MOD*el; AERMOD is being developed by AERMIC: *A*MS/*E*PA *R*egulatory *M*odel *I*mprovement *C*ommittee.

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound regional air quality models for regulatory assessments of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7957–2; E–Docket ID No. ORD–2005–0022]

Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is extending the public comment period on the external review draft document titled, ''Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment'' (EPA/600/R–05/043A), by 45 days. On July 28, 2005, EPA published a **Federal Register** notice (70 FR 43692) announcing: (1) The public availability of the draft document; (2) the beginning of a 30-day public comment period; and (3) an anticipated external peer-review workshop. EPA is extending the public comment period to October 14, 2005, in response to requests for extension of the comment period. EPA intends to make comments received by the end of the extended public comment period (October 14, 2005) available to Versar, Inc., an EPA contractor for external scientific peer review, for the external peer review panelists prior to the anticipated workshop. The U.S. EPA will consider all comments received by October 14, 2005, in preparing a final report.

EPA still expects Versar, Inc., to convene a panel of experts and organize and conduct an external peer-review workshop. This workshop will be announced in a separate **Federal Register** notice, once EPA is notified by Versar, Inc., of the date and location for the workshop. The public comment period and the external peer-review workshop are separate processes that will provide opportunities for all interested parties to comment on the document. In preparing a final report, EPA will consider any public comments that EPA receives in accordance with this notice.

DATES: The 45-day extension of the public comment period begins August 30, 2005, and ends October 14, 2005. Technical comments should be in writing and must be received by EPA by close of business October 14, 2005.

ADDRESSES: The draft document and EPA's peer-review charge are available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff, National Center for Environmental Assessment; telephone: (202) 564–3261; facsimile: (202) 565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document title,

''Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment'' (EPA/600/R–05/043A).

Comments may be submitted electronically via EPA's E–Docket, by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the OEI Docket; telephone: (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov*.

If you have questions about the document, please contact the Technical Information Staff, National Center for Environmental Assessment, U.S. Environmental Protection Agency, Washington, DC 20460; telephone: (202) 564–3261; facsimile: (202) 565–0050; or e-mail: *NCEADC.Comment@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Physiologically-based pharmacokinetic (PBPK) models represent an important class of dosimetry models that are useful for predicting internal dose at target organs for risk assessment applications. Dose-response relationships that appear unclear or confusing at the administered dose level can become more understandable when expressed on the basis of internal dose of the chemical. To predict internal dose level, PBPK models use pharmacokinetic data to construct mathematical representations of biological processes associated with the absorption, distribution, metabolism, and elimination of compounds. With the appropriate data, these models can be used to extrapolate across species and exposure scenarios, and address various sources of uncertainty in risk assessments. This external review draft document addresses the following questions: (1) Why do risk assessors need PBPK models; (2) How can these models be used in risk assessments; and (3) What are the characteristics of acceptable PBPK models for use in risk assessment?

II. How To Submit Technical Comments to EPA's E-Docket

EPA has established an official public docket for information pertaining to ''Approaches for the Application of Physiologically-Based Pharmacokinetic (PBPK) Models and Supporting Data in Risk Assessment'' (EPA/600/R–05/043A), Docket ID No. ORD–2005–0022. The official public docket is the collection of materials available for public viewing and includes the documents specifically referenced in this action, any public comments received, and other information related to this action, but excludes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, E-Docket. You may use E-Docket at *http://www.epa.gov/edocket/* to submit or view public comments, to access the index 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.

Certain types of information will not be placed in E-Docket. Information claimed as CBI and other information for which disclosure is restricted by statute will not be available for public viewing in the official public docket or in E-Docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be referenced there and will be available as printed material in the official public docket.

If you intend to submit comments to EPA, please note that it is EPA policy to make public comments available for public viewing as received at the EPA Docket Center or in E-Docket. This policy applies to information submitted electronically or in paper form, except where restricted by copyright, CBI, or 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 official public docket.

Public comments submitted on computer disks that are mailed or delivered to the EPA Docket Center will be transferred to E-Docket. Public comments that are mailed or delivered to the EPA Docket Center will be scanned and placed in E-Docket. Where practical, physical objects will be photographed, and the photograph will be placed in E-Docket with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or by hand delivery/courier. To ensure proper receipt by EPA, include the appropriate docket identification number with your submission. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits.

If you submit comments electronically, 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 submitted disk or CD–ROM, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the person submitting the comment and allows EPA to contact you in case the Agency cannot read your submission due to technical difficulties or needs further information on the substance of your comment. 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 E-Docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, it may delay or preclude consideration of your comment.

Electronic submission of comments to E–Docket 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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. ORD–2005–0022. 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.

Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2005–0022. 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 E-Docket, EPA's e-mail system automatically captures your e-mail address, and it becomes part of the information in the official public docket and in E-Docket.

You may submit comments on a disk or CD–ROM that you mail to the OEI Docket mailing address. Files will be accepted in WordPerfect, Word, or PDF format. Avoid the use of special characters and any form of encryption.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Dated: August 16, 2005.

George Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 05–16597 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–0010; FRL–7956–7]

Office of Environmental Information; Announcement of Availability and Comment Period for Institutional Controls Draft Data Standard

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability & request for comment.

SUMMARY: Notice of availability for a 45 day review and comment period is hereby given for the Draft Institutional Controls Data Standard.

The Draft Institutional Control (IC) Data Standard provides a structure for defining the elements required for describing IC information. It provides information about the implementation, monitoring, enforcement, and termination of instruments (via the IC Event) as well as the objectives they meet, associated locations, affiliates and their roles/responsibilities relevant to the IC, cleanup actions (via the IC Event), technologies, and the documentation related to each of the aforementioned subsets of data. States and U.S. EPA completed a technical review of this standard in the Fall of 2004.

DATES: Comments must be submitted on or before October 5, 2005.

FOR FURTHER INFORMATION CONTACT: Dawn Banks-Waller; Environmental Protection Agency; 1200 Pennsylvania Avenue, MC 2822T; Washington, DC 20460; Phone: (202) 566 0625; Fax: (202) 566 1624; e-mail: *Banks-Waller.Dawn@epa.gov*.

SUPPLEMENTARY INFORMATION: This standard was developed by the Environmental Data Standards Council (EDSC). The EDSC is a partnership of among EPA, States, and Tribes which promotes the efficient sharing of environmental information through the cooperative development of data standards.

The standards are intended for use in environmental data exchanges among States, tribal entities and the U.S. EPA. They are not meant to dictate or to limit data an agency chooses to collect for its own internal purposes. Adoption of a data standard should not be interpreted to mean that revisions to databases or information systems are required. What the adoption does mean is that formats for sharing data with Exchange Network (EN) partners will change because the Exchange Network has adopted Shared Schema Components (SSCs) based on the data standards. The SSCs are available on the Exchange Network Web site at *http://www.exchangenetwork.net*.

The draft data standards documents can be found on EDSC's Web site at *http://www.envdatastandards.net/* and are available through the Docket system as indicated below.

I. General Information

A. How Can I Get Copies of These Documents and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OEI–2005–0010. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Dated: August 10, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–16595 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–U

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 September 15, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. NBT Bancorp, Inc., Norwich, New York, to merge with CNB Bancorp, Inc., and thereby indirectly acquire City National Bank and Trust Company, both of Gloversville, New York.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah; to acquire 100 percent of The Commerce Bank of Oregon (in organization), Portland, Oregon.

Board of Governors of the Federal Reserve System, August 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–16561 Filed 8–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 05-16089) published on page 53354 of the issue for Tuesday, August 9, 2005.

Under the Federal Reserve Bank of Cleveland, the entry for Rurban Financial Corporation, Defiance, Ohio, is revised to read as follows:

Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

Rurban Financial Corporation, Defiance, Ohio; to merge with Exchange Bancshares,Inc., and thereby acquire The Exchange Bank, both of Luckey, Ohio.

Comments on this application must be received by September 8, 2005.

Board of Governors of the Federal Reserve System, August 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–16563 Filed 8–19–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 6, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. NordDeutsche Landesbank Girozentrale, Hannover, Germany; to engage de novo through its subsidiary, Nord/LB Financial Services LLC, in financial advisory services, pursuant to Sections 225.28(b)(1),(6) and (7) of Regulation Y.

Board of Governors of the Federal Reserve System, August 16, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–16562 Filed 8–19–05; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[GSAR 2005–N02]

General Services Administration Acquisition Regulation; White Paper—Adding Ancillary Repair and Alteration Services to the General Services Administration Schedules Program

AGENCIES: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Notice with a request for comments.

SUMMARY: The General Services Administration (GSA) is considering adding ancillary Repair and Alteration (R&A) services to the GSA Schedules Program. The Federal Acquisition Regulation (FAR) describes R&A services as a subset of construction services. As such, the GSA Schedules Program has not been able to provide fully-integrated solutions that often involve R&A services. The GSA requests that interested parties provide comments.

DATES: Interested parties should submit written comments to the FAR Secretariat on or before October 21, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR notice 2005–N02 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/GSAM/gsamproposed.html*. Click on Proposed Rules, and the GSAR Case number to submit comments.
- E-mail: *gsarnotice.2005–N02@gsa.gov*. Include GSAR notice 2005–N02 in the subject line of the message.
- Fax: (202) 501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, Attn: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR notice 2005–N02 in all correspondence related to this notice. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (VIR), Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900 or by e-mail at *linda.nelson@gsa.gov*. Please cite GSAR notice 2005–N02.

SUPPLEMENTARY INFORMATION:

A. Background

GSA invites the general public and other Federal agencies to comment on the following White Paper that includes specific questions at the end. In particular, GSA encourages comments regarding its impact on small businesses.

Dated: August 11, 2005.

Roger D. Waldron,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

White Paper—Adding Ancillary Repair and Alteration Services to the GSA Schedules Program

The General Services Administration (GSA) is considering the possibility of adding ancillary Repair and Alteration (R&A) services to the GSA Schedules Program. Over the past several years, we have become increasingly aware of a growing number of customer requirements that fall within the scope of the GSA Schedules but which require ancillary R&A services. Historically, the GSA Schedules have not provided an avenue by which a customer could obtain these combined requirements. Consideration of adding ancillary R&A services is an attempt to extend the benefits realized through the GSA Schedules Program and to offer one-stop, total solutions to our customers.

The first step is to determine whether GSA should add ancillary R&A services to the GSA Schedules Program. Should GSA decide to proceed, the next step is to determine the best approach for implementation. The implementation options GSA is examining include: (a) Adding a new Special Item Number (SIN) to existing GSA Schedules, (b) create a new Schedule, or (c) utilizing any other viable alternative to incorporate R&A services to the GSA Schedules Program.

The North American Classification System (NAICS) and the Federal Acquisition Regulation (FAR) describe R&A services as a subset of construction services. Contractors that are engaged in this industry are commonly known as general contractors (NAICS Subsector 236), or specialty trade contractors (NAICS Subsector 238). General contractor types may arrange the performance of separate parts of the project through subcontracts with other contractors. The specialty trade contractors perform a specific component (*e.g.*, electrical work, painting) of the project. They often perform remodeling and repair type tasks associated with purchase of various other supplies or services (visit *http://www.census.gov/epcd/www/naics.html* for additional information on NAICS codes).

The following is a sample of GSA schedules that include supplies or services whose purchase often requires the associated performance of ancillary R&A services: Furniture Schedules 71–I (Office Furniture), 71–II (Household and Quarters Furniture), 71–II–H (Packaged Furniture), 71–II–k (Comprehensive Furniture Management Services), 71–III (Special Use Furniture), 72–I–A (Floor Coverings) and 72–II (Furnishings); and Schedule 70 (Information Technology). A thorough analysis of the current Schedules to determine which require inclusion of ancillary R&A services will be conducted upon decision to proceed. A complete listing of current GSA Schedules is available on the Schedules e-Library (*www.gsa.gov/e-library*).

Given the GSA Schedules identified above, the following scenario realistically describes the current challenge a customer faces when acquiring supplies and services covered by the GSA Schedules that require ancillary R&A services: An agency customer purchases new office furniture using GSA Schedule 71–I and new computers using Schedule 70. The customer's requirement also includes room alterations to accommodate the new furniture and installation of network cable for the new computers. Thus, the customer's total solution requires ancillary R&A type tasks associated with the purchase of office furniture and computers. The current GSA Schedule model fails to provide customers with the integrated program design necessary to achieve the total solution needed because the above-mentioned customer must procure additional R&A services to—

- Alter a wall to appropriate the new furniture: a general contractor, NAICS 236210 (Industrial Building Construction—Addition, Alteration and renovation, general contractors); and
- Install computer and network cable for the new computers: A specialty trade contractor, NAICS 238210 (Electrical Contractors—Computer and network cable installation).

Currently, when utilizing the GSA Schedule to procure the principal supplies and services, the customer must acquire the ancillary R&A services from another procurement vehicle. As a result of the need to conduct an additional procurement, the customer is subject to inefficiencies, increased costs, unnecessary complexities as well as delay in realizing the end results. Adding ancillary R&A services to the GSA Schedule would allow GSA to provide the customer with a one-stop, total solution process.

This document discusses the various relevant issues such as: Statutory/regulatory considerations, scope, pricing, competition, and clause applicability. Additionally, a primary GSA concern is the impact this initiative will have on small business.

GSA seeks comments from all stakeholders, and in particular, from small businesses to determine both the feasibility of this effort and how best to achieve the desired results.

I. The GSA Schedules Program

Overview

In a general sense, the role performed by the GSA under the GSA Schedules Program is that of a market maker, providing industry and customer agencies the necessary vehicles to come together and transact their business. Specifically, the GSA Schedules Program provides Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. GSA awards indefinite delivery contracts to commercial firms to provide supplies and services at stated prices for given periods of time.

GSA schedule contracts are firm fixed price or firm fixed price with economic price adjustment type. They are typically evergreen (awarded with a 5-year base period and three 5-year options) and include conditions under which a contractor may offer price discount to authorized users without triggering mandatory across-the-board price reduction.

Prior to awarding a schedule contract, GSA determines the contractor to be responsible in accordance with FAR subpart 9.1, negotiates and approves an acceptable subcontracting plan for large businesses, and negotiates and awards fair and reasonable pricing based on the firm's Most Favored Customer rates. Because GSA performs much of the up-front work, agencies then benefit from a streamlined ordering process.

Under the GSA Schedules Program's continuous open solicitation policy, offers for commercial supplies or services may be submitted at any time. Similarly, contractors may request to add supplies/services to their contracts at any time during the term of their contract.

GSA Schedule Pricing Policies

Because GSA Schedule contracts are awarded under commercial terms and conditions, GSA uses a price-based approach to negotiate contract pricing. This approach relies on the prices of the supplies/services that are the same or similar to those in the commercial marketplace. Under this approach, submission of cost or pricing data is not required.

GSA's negotiation objective is to receive prices that are equal or better than a company's ''Most Favored Customer'' pricing. To arrive at a price

that the Government considers fair and reasonable, offerors are required to submit information pertaining to their commercial sales and discounting practices using the Commercial Sales Practices Format (see Attachment) that is included in each GSA Schedule solicitation.

Under the Economic Price Adjustment clause, Schedule contractors may increase or decrease prices according to their commercial practice. Price decreases may be submitted at any time during the contract period. Price increases, resulting from a reissue or modification of the contractor's commercial catalog that formed the basis for award, can only be made effective on or after the initial 12 months of the contract period, and then periodically thereafter for the remainder of the contract term.

The Ordering Process

The GSA Schedules Program provides a streamlined ordering process for customer agencies. The specific ordering requirements that a customer must follow are governed by whether the requirement is for supplies or for services and the dollar value of the order. The ordering procedures are contained in FAR subpart 8.405–1 and 8.405–2 and may be accessed via the following Web site: *http://www.acqnet.gov/far/*.

A unique feature of the GSA Schedules Program is the Maximum Order Threshold (MOT). The MOT represents the level above which customers should seek additional price reductions from Schedule contractors. Contractors are not required to accept orders above the MOT, but they may elect to accept any size order.

The GSA Schedules Program also affords contractors an opportunity to join with other Schedule contractors in teaming arrangements to fill specific customer orders. Not only does this increase a contractor's opportunities for business, but it also enables customers to achieve a ''total solution'' to meet their needs.

II. Issues, Questions, and Alternatives for Consideration

Statutory/Regulatory Requirements for R&A Services

There are statutory and regulatory considerations associated with the addition of R&A services to GSA Schedules Program.

A primary issue is the fact that GSA Schedule contracts are typically awarded using the procedures outlined in FAR part 12, which governs the acquisition of commercial supplies and services. In a July 2003 memorandum entitled ''Applicability of FAR part 12 to Construction Acquisitions,'' Angela Styles, former Office of Federal Procurement Policy Administrator, indicated that routine alteration and repair services are considered commercial and may be acquired using FAR part 12 procedures (this memorandum may be accessed at the following Web site under ''Memos'': *http://www.acqnet.gov/AcqNet/Notes/*). Consistent with the memorandum, it is not GSA's intent to circumvent the unique construction-related requirements contained within FAR part 36 when incorporating ancillary R&A services to the GSA Schedules. The following excerpt from the memorandum describes the scope of the ancillary R&A services envisioned by this initiative:

> * * * routine painting or carpeting, simple hanging of drywall, everyday electrical or plumbing work, and similar noncomplex services, as well as for purchases of commercial construction material and associated ancillary services.

In order to safeguard the government's interests and to comply with applicable labor laws, GSA proposes including all of the required statutory/regulatory requirements pertaining to ancillary R&A services. Some of the major statutory requirements applicable to R&A services include:

- Davis Bacon Act
- Copeland Act (Anti-Kickback)
- Contract Work Hours and Safety Standards Act
- Miller Act (bonds)

Matrices detailing all of the required clauses for both construction and commercial item contracts may be found at *http://www.arnet.gov/far/current/matrix/Matrix_01.html* and at *http://www.arnet.gov/GSAM/gsam.html*.

A second issue is the consideration of whether to implement the above-mentioned requirements at the contract level or at the task order level. Currently, when an agency customer uses the GSA Schedules to procure a requirement to which additional agency-specific restrictions are applicable, the agency-unique provisions may be incorporated at the task order level as long as they do not conflict with the underlying Schedule terms and conditions. Security clearances are an example of such a requirement.

Just as agency-unique provisions are addressed at the task order level, it appears that the Miller Act requirements should be dealt with in a similar fashion, for similar reasons. The FAR contains thresholds and differing provisions for bonding at various thresholds. Acknowledgement of the Miller Act and other FAR mandated payment/performance protection requirements should take place at the contract level. However, the implementation of the actual requirement would be enacted at the task order level as appropriate.

Contract Scope and Its Impact on Competition

GSA ensures that the GSA Schedules afford ordering agencies the maximum opportunity to compete requirements under the program (as of June 2004, there are 15,546 Schedule contracts in effect). Additionally, increasing procurement opportunities for small businesses is and has been a major GSA initiative. GSA works hard to ensure that small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business sources have every opportunity possible to participate in the Federal procurement process.

GSA is fully committed to strengthening the sustainability of the 25 million small businesses in America. Under the Schedules Program, GSA actually exceeds the expectations of the Small Business Administration. The governmentwide goal for contracting with small businesses is 23 percent. In FY 2002, small businesses received 34.8 percent of the total $21.1 billion in Schedule sales and in FY 2003, small businesses received 35.6 percent of the total $25.6 billion in sales. As of Q3 FY 2004, small businesses received 35.7 percent of the total Schedule sales; and approximately 80 percent or 12,414 of 15,546 GSA Schedule contracts awarded is with small businesses.

Many existing GSA Schedule contracts are worldwide in scope in the sense that firms may elect to offer delivery of supplies and services domestically, overseas, or internationally. It is possible that the inclusion of ancillary R&A services in contracts having worldwide scope may have an adverse impact on certain businesses. While some R&A firms are national in scope, most are regional or locally based and they must be duly licensed under local jurisdictions. Therefore, GSA may consider narrowing the scope of a resultant R&A Schedule to designated regional areas.

As indicated previously, the scope of the R&A services being contemplated is ancillary in nature to existing Schedule supplies/services and represent minor repairs and alterations. The GSA Schedules containing ancillary R&A services must be consistent with all

rules and regulations and the SOW must be well-defined.

Pricing

One of the most difficult questions to address in this area is how to negotiate pricing for ancillary R&A services under the GSA Schedules Program. As noted above, Schedule contracts are predicated on the Government's negotiation of most favored customer discounts from contractors' established prices for commercial supplies/services.

On a typical Schedule contracts providing services, pricing is negotiated based on fully-loaded hourly rates for the type of service to be provided. Ordering agencies seeking services would provide the SOW and ask Schedule contractors to quote fixed rates and the level of effort/mix of labor for such services. However, it has been suggested that ancillary R&A services do not readily lend themselves to such a pricing methodology due to the numerous labor categories generally involved in an R&A project and all of the variables that come into play at the work site.

Listed below are some alternatives for pricing ancillary R&A services under a GSA Schedule contract:

a. Award the R&A Schedule contracts without pricing, allowing customers to compete and negotiate pricing for individual requirements among the various Schedule contractors. This is similar to the method that GSA's Public Buildings Service (PBS) currently utilizes in the award of multiple award indefinite delivery/indefinite quantity construction contracts. Although customers would still need to negotiate prices under this alternative, they would still benefit from GSA having completed much of the up-front work in awarding the Schedule contract.

The Schedule contract would provide them with a source of contractors already deemed responsible in accordance with FAR Subpart 9.1. In addition, GSA would negotiate subcontracting plans and incorporate basic terms and conditions into the contract.

b. Negotiate pricing based on labor rates for specific geographic areas at the contract level (including utilization of techniques such as fixed price multiplier, applied to the locality-specific Davis Bacon base rates) and allow the customer to seek price quotes for individual orders based on the negotiated labor rates.

c. Negotiate pricing based on the commercially-accepted Means Cost Data (*e.g.*, RSMeans Cost Data). The Means Cost Data is a series of publication that cover general construction costs in such categories as labor, materials, equipment, as well as pricing for subcontracting specialties such as mechanical, concrete/masonry, plumbing, electrical, and repair and remodeling. The Means Cost Data also contain adjustment factors covering various cities in the United States. If this approach were adopted, GSA would need to ensure that the costs contained in the Means Cost Data are reflective of and include wage rates that are in compliance with the Davis Bacon Act. It may be possible for GSA to negotiate an agreement with the publishers of the Means Cost Data to publish an electronic GSA-unique version of the publication.

d. Allow firms to propose various pricing strategies depending upon their commercial practice. This may take the form of labor rates, fixed unit prices, overhead adjustors, markups, share-in-savings, etc.

Award Considerations

The following are three suggested methods to include ancillary R&A services into the GSA Schedules Program:

Alternative One—Add an R&A services SIN to those GSA Schedules where the purchase of the supply/service often requires ancillary R&A services be performed. An issue associated with this alternative is whether to restrict award of such a SIN to only contractors who provide the primary supply/service or to allow all responsible offerors to be considered for award under the ancillary R&A SIN regardless of whether they are under contract to provide the related supplies and services. This decision may impact access to small businesses and it may also require customers to deal with multiple contractors under teaming arrangements.

Alternative Two—Establish a new Schedule specifically for minor R&A services. An independent schedule for these services would highlight R&A's unique requirements, allowing for a clear definition of the types of minor services applicable, identification of the specialized clauses, unique pricing instructions if required, different scope requirements, etc. Existing Schedule contractors could team with the R&A Schedule firms to provide a total solution to customers.

Alternative Three—Combine Alternative One and Two. This alternative provides maximum flexibility to the customers.

Other Considerations

The Public Buildings Act of 1959, as amended, provides that only GSA and those agencies having a delegation from GSA or having their own independent authority may enter into construction contracts. The Department of Defense (DoD), National Aeronautics and Space Administration (NASA), and GSA's Public Buildings Service (PBS) represent three dominant procurers of construction services. Language will be added to the Schedule and any associated user-related brochures to stipulate clearly that only warranted construction Contracting Officers representing authorized agencies may use this Schedule to procure R&A services.

GSA will need to address how tenants residing in Government-owned/leased buildings that are managed by other authorized Federal agencies (*e.g.* PBS) will coordinate the purchase of Schedule R&A services with the appropriate building owner/manager. Agencies that fail to coordinate R&A services with the appropriate building owner/manager may find themselves monetarily responsible for restoring the space to its original condition. For example, any alteration of PBS-controlled real property requires approval/oversight by the PBS Building Manager. This should be the policy of all building owner/managers. Concerned parties have also suggested that drilling a simple hole in a wall may interrupt an entire building's HVAC system. Therefore, GSA believes it may be necessary to add requirements for customers to coordinate all Schedule R&A services with, and receive approval from, the appropriate building owner/manager prior to placing an order against the R&A Schedule. These instructions will be included in unique ordering procedures for Schedule R&A services and should include:

a. Discussion of the project scope in detail with the building owner/manager.

b. Proposed work shall not exceed basic alteration of stud walls of non-structural gauge hollow metal framing and will not impact structural assemblies or load bearing walls. The work does not preclude utility work within the basic alteration.

c. All work shall be in strict accordance with ''Building Standards.'

d. Work shall have no impact on historical preservation elements or historic zones.

e. Work shall meet all applicable building codes, including but not limited to egress and fire safety standards.

f. All contractors must comply with existing policies involving security requirements for working in federally owned/leased buildings.

g. All contractors must possess all required credentials of the trade(s) which are to be employed.

h. Work planned should not exceed $25,000 in construction value.

III. Conclusion

Many issues must be carefully analyzed and addressed if GSA is to successfully add ancillary R&A services under the GSA Schedules Program. Prior to moving forward, GSA seeks comments on the entirety of this white paper and responses to the specific questions identified below. For reference, the questions below pertain to the discussions contained within the associated subheadings as stipulated above.

Statutory/Regulatory Requirements

1. Would it be more advantageous to incorporate and apply the Davis-Bacon Act requirement at the contract level or order level?

2. To comply with the Miller Act, should contractors be required to obtain the necessary bonds as a condition for contract award or should this be a requirement imposed only at the time of order placement?

3. Other than those addressed above, are there other significant statutory or regulatory requirements that apply to R&A services contracts?

Contract Scope and Its Impact on Competition

4. Do construction firms typically conduct their business within a specific geographic area? If so, what is the usual scope of that geographic area?

5. What impact would retaining a worldwide scope when adding R&A services to the Schedules have on the construction industry and on competition among contractors interested in participating in the program? In particular, what would be the impact on current GSA Schedule contractors that are small businesses?

6. Would changing the contract scope specifically for R&A services from worldwide to regional (covering major metropolitan areas) afford small firms a better opportunity to compete for business under the GSA Schedules Program?

7. R&A services can include various types of work on a particular building or site that is dedicated to and deemed a part of the worksite. Should limitations be included in the SOW contained within the Schedule solicitation? If so, please provide suggested language.

Pricing

8. Can GSA apply the same pricing methodology of negotiating Most Favored Customer pricing to R&A service contracts? Does the construction industry have different categories of customer for pricing purpose, such as a Most Favored Customer category?

9. Will the construction industry be able to provide standard commercial pricing, terms and conditions under the Commercial Sales Practices Format so that GSA can determine the price reasonableness of a firm's proposal?

10. How many different labor categories would typically be involved in a contract for construction services and how are commercial R&A tasks typically priced?

11. Please comment on the usefulness and applicability of the proposed pricing methods. What pricing alternatives, other than those discussed in the Pricing section above, should be considered?

12. Is there any reason why customers would be unable to use a Firm Fixed Price, Time and Materials type order to procure these services from an R&A Schedule?

Award Considerations

13. Which of the three alternatives set forth previously do you believe offers maximum benefit and why?

14. Please suggest any other alternatives.

Other Considerations

15. Generally, are the GSA Schedule ordering procedures in FAR Subpart 8.4 suitable for R&A services contracts?

16. Should a maximum order limitation/threshold be established for R&A services?

17. Are the items addressed in Section II, a–h appropriate conditions for inclusion in the ordering procedures for Schedule R&A services?

18. What unique criteria, if any, should be established for a buyer of R&A services?

General

19. What other issues or concerns need to be addressed?

BILLING CODE 6820–61–P

Attachment

COMMERCIAL SALES PRACTICES FORMAT (CSP-1)

Name of Offeror: _____

SIN(s): _____

Note: Please refer to clause 552.212-70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE) [SEE E.5], for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or SubSIN for which information is the same).

(1) Provide the dollar value of sales to the general public at or based on an established catalog or market price during the previous 12-month period or the offerors last fiscal year: $_____. State beginning and ending of the 12 month period. Beginning_____Ending_____. In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

(2) Show your total projected annual sales to the Government under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract.

Special Item No.	132-3	Leasing of Equipment	$_____
Special Item No.	132-4	Daily / Short Term Rental	$_____
Special Item No.	132-8	Purchase of Equipment	$_____
Special Item No.	132-12	Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts	$_____
Special Item No.	132-32	Term Software Licenses	$_____
Special Item No.	132-33	Perpetual Software Licenses	$_____
Special Item No.	132-34	Maintenance of Software	$_____
Special Item No.	132-50	Training Courses	$_____
Special Item No.	132-51	Information Technology Professional Services	$_____
Special Item No.	132-52	Electronic Commerce Services	$_____
Special Item No.	132-53	Telecommunication Transmission Services	$_____

(3) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES____ NO_____. (See definition of "concession" and "discount" in 552.212-70.)

(4) (a) Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.2, which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required.

COLUMN 1 CUSTOMER	COLUMN 2 DISCOUNT	COLUMN 3 QUANTITY/VOLUME	COLUMN 4 FOB TERM	COLUMN 5 CONCESSIONS

(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES ____ NO_____. If YES, explain deviations in accordance with the instructions at Figure 515.4-2, which is provided in this solicitation for your convenience.

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers' information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer's sales under any resulting contract are expected to exceed $500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer's sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name
(b) Manufacturer's Part Number
(c) Dealer's/Reseller's Part Number
(d) Product Description
(e) Manufacturer's List Price
(f) Dealer's/Reseller's percentage discount from List Price or net prices

Figure 515.4-2-Instructions for Commercial Sales Practices Format

If you responded "YES" to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded "NO" complete the chart in question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customer categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reduction clause at 552.238-75. The Government expects you to provide information required by the format in accordance with these

instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 14 calendar days prior to its submission. You must also disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

Column 1-Identify the applicable customer or category of customer. A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

Column 2-Identify the discount. The term "discount" is as defined in solicitation clause 552.212-70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

Column 3-Identify the quantity or volume of sales. Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

Column 4-Indicate the FOB delivery term for each identified customer. See FAR 47.3 for an explanation of FOB delivery terms.

Column 5-Indicate concessions regardless of quantity granted to the identified customer or category of customer. Concessions are defined in solicitation clause 552.212-70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond "YES" to question 4 (b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

(End of White Paper)

[FR Doc. 05–16254 Filed 8–19–05; 8:45 am]
BILLING CODE 6820–61–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Nominations for Membership on the Secretary's Advisory Committee on Human Research Protections

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

ACTION: Notice.

Authority: 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The committee is governed by the provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The Office for Human Research Protections (OHRP), a program office in the Office of Public Health and Science, Department of Health and Human Services (HHS), is seeking nominations of qualified candidates to be considered for appointment as members of the Secretary's Advisory Committee on Human Research Protections (SACHRP). SACHRP provides advice and recommendations to the Secretary, HHS, and the Assistant Secretary for Health on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. SACHRP was established by the Secretary, HHS, on October 1, 2002. OHRP is seeking nominations of qualified candidates to fill three positions on the Committee membership that will become vacant on January 1, 2006.

DATES: Nominations for membership on the Committee must be received no later than 5 p.m. EST on October 1, 2005, at the address listed below.

ADDRESSES: Nominations should be mailed or delivered to: Dr. Bernard Schwetz, Director, Office for Human Research Protections, Department of Health and Human Services, 1101 Wootton Parkway, Suite 200; Rockville, MD 20852. Nominations will not be accepted by e-mail or by facsimile.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Slatinshek, Executive Director, SACHRP, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852. Telephone: 1–240–453–6900. A copy of the Committee charter and list of the current membership can be obtained by contacting Ms. Slatinshek or by accessing the SACHRP Web site at *http://www.hhs.gov/ohrp/sachrp* , or requesting via e-mail at *sachrp@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: The Committee shall advise on matters pertaining to the continuance and improvement of functions within the authority of HHS directed toward protections for human subjects in research. Specifically, the committee will provide advice relating to the responsible conduct of research involving human subjects with particular emphasis on: Special populations, such as neonates and children, prisoners, and the decisionally impaired; pregnant women, embryos, and fetuses; individuals and populations in international studies; populations in which there are individually identifiable samples, data, or information; and investigator conflicts of interest.

In addition, the Committee is responsible for reviewing selected ongoing work and planned activities of the OHRP and other offices/agencies within HHS responsible for human subjects protection. These evaluations may include, but are not limited to, a review of assurance systems, the application of minimal research risk standards, the granting of waivers, education programs sponsored by OHRP, and the ongoing monitoring and oversight of institutional review boards and the institutions that sponsor research.

Nominations: The Office for Human Research Protections is requesting nominations to fill three positions for voting members of SACHRP. The positions will become vacant on January 1, 2006. Nominations of potential candidates for consideration are being sought from a wide array of fields, including, but not limited to: public health and medicine; behavioral and social sciences; health administration; biomedical ethics. To qualify for consideration of appointment to the Committee, an individual must possess demonstrated experience and expertise in any of the several disciplines and fields pertinent to human subjects protection and/or clinical research.

The individuals selected for appointment to the Committee will serve as voting members. The individuals selected for appointment to the Committee can be invited to serve a term of up to four years. Committee members receive a stipend for attending Committee meetings and conducting other business in the interest of the Committee, including per diem and reimbursement for travel expenses incurred.

Nominations should be typewritten. The following information should be included in the package of material submitted for each individual being nominated for consideration: (1) A letter of nomination that clearly states the name and affiliation of the nominee, the basis for the nomination (*i.e.*, specific attributes which qualify the nominee for service in this capacity), and a statement that the nominee is willing to serve as a member of the Committee; (2) the nominator's name, address and daytime telephone number, and the home and/or work address, telephone number, and email address of the individual being nominated; and (3) a current copy of the nominee's curriculum vitae. The names of Federal employees should not be nominated for consideration of appointment to this Committee.

The Department makes every effort to ensure that the membership of HHS Federal advisory committees is fairly balanced in terms of points of view

represented and the committee's function. Every effort is made to ensure that a broad representation of geographic areas, females, ethnic and minority groups, and the disabled are given consideration for membership on HHS Federal advisory committees. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status.

Nominations must state that the nominee is willing to serve as a member of SACHRP and appears to have no conflict of interest that would preclude membership. Potential candidates are required to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Dated: August 16, 2005.

Bernard A. Schwetz,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 05–16506 Filed 8–19–05; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0311]

Critical Path Initiative; Developing Prevention Therapies; Planning of Workshop; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for comments; correction.

SUMMARY: The Food and Drug Administration is correcting a notice that appeared in the **Federal Register** of August 3, 2005 (70 FR 44660). The document announced the planning of a workshop as part of its Critical Path Initiative and requested comments. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 05–15282, appearing on page 44660 in the **Federal Register** of Wednesday, August 3, 2005, the following correction is made:

1. On page 44660, in the second column, in the headings section of the document, ''[Docket No. 2004N–0355]'' is corrected to read ''[Docket No. 2005N–0311]''.

Dated: August 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16504 Filed 8–19–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Application for Certification and Recertification as a Federally Qualified Health Center (FQHC) Look-Alike (OMB No. 0915–0142): Extension

HRSA proposes to extend the application guide used by organizations applying for certification or recertification as a Federally Qualified Health Center (FQHC) Look-Alike for purposes of cost-based reimbursement under the Medicaid and Medicare programs. The requirements described in the application guide are for health centers that serve a population that is medically underserved as defined in section 330 of the Public Health Service (PHS) Act. The estimated burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total Burden Hours
Application	40	1	100	4,000
Recertification	100	1	15	1,500
Total	140	.....	.....	5,500

Comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Kraemer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 15, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16503 Filed 8–19–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 14, 2005, 9 a.m.–5 p.m., e.d.t.

Place: Audio Conference Call and Parklawn Building, Conference Rooms G and H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Wednesday, September 14, from 9 a.m. to 5 p.m. The public can join the meeting in person at the address listed above or by audio conference call by dialing 1–800–369–6048 on September 14 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the September meeting will include, but are not limited to: a presentation on the draft combination Vaccine Information Statement for diphtheria-tetanus-acellular-pertussis, *haemophilus influenzae* type b, polio, pneumococcal, and hepatitis B; a report from the ACCV Workgroup meeting on standards for adding injuries to the Vaccine Injury Table; a summary of the Program Assessment Rating Tool results; and updates from the Division of Vaccine Injury Compensation (DVIC), the Department of Justice, the National Vaccine Program Office, the Centers for Disease Control and Prevention, the National Institute of Allergy and Infectious Diseases (National Institutes of Health), and the Food and Drug Administration. Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Cheryl Lee, Principal Staff Liaison, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail *clee@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Ms. Cheryl Lee, Principal Staff Liaison, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–2124 or e-mail *clee@hrsa.gov.*

Dated: August 15, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16502 Filed 8–19–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Interdisciplinary, Community-Based Linkages.

Dates and Times: September 12, 2005, 8:30 a.m.–5:30 p.m.; September 13, 2005, 8:30 a.m.–5:30 p.m.; September 14, 2005, 8:30 a.m.–3:00 p.m.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, Virginia 22202. Telephone (703) 416–1600.

Status: The meeting will be open to the public.

Agenda: Agenda items will include, but not be limited to: Welcome; plenary session on Interdisciplinary Education, specifically the best practices and components of currently funded project as well as hearing testimony from experts in health professions community. The Committee has developed questions to help them focus on the best advice and recommendations to provide to the Secretary and Congress.

The following topics will be addressed at the meeting:

What are effective interdisciplinary training programs and how are they achieved?

How could these programs be enhanced in the future to meet the needs of future employers and the health care system generally?

Proposed agenda items are subject to change as priorities dictate.

Public Comments: Public comments will be permitted at the end of the Committee meeting on September 13, 2005, and before lunch on September 14, 2005. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, with a copy of their presentation to Vanessa Sincock, Public Health Fellow, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–19, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–3460.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The Division of State, Community and Public Health will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file a request in advance for a presentation, but wish to make an oral statement may register to do so at the Crowne Plaza National Airport, Arlington, VA, on September 13, 2005. These persons will be allocated time as the Committee meeting agenda permits.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Vanessa Sincock, Division of State, Community and Public Health, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–19, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–3460.

Dated: August 15, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16501 Filed 8–19–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its fifty-first meeting:

Name: National Advisory Committee on Rural Health and Human Services.

Dates and Times: September 18, 2005, 1:30 p.m.–5:15 p.m.; September 19, 2005, 8 a.m.–5 p.m.; and September 20, 2005, 8:30 a.m.–10:30 a.m.

Place: Spring Creek Ranch, 1800 Spirit Dance Road, Jackson Hole, WY 83001, Phone: 307–733–8833.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Sunday afternoon, September 18, at 1:30 p.m., the Chairperson, the Honorable David Beasley, will open the meeting and welcome the Committee. The Committee will hear a presentation on the State of Wyoming from Dr. Brent Sherard, Director of Wyoming Department of Health, and Dr. Robert Kelley, Dean of College of Health Sciences, University of Wyoming. Following this presentation will be a panel on pharmacy issues by representatives from the PharmAssist Program and the National Health Service Corps Loan Repayment Program for Pharmacists. The next presentation on Health Information Technology (HIT) will feature John Snow who will discuss the statewide HIT survey. The final session of the day will be a presentation on family caregiver support for rural elderly by Bev Morrow with the Department of Health, Aging Division. The Sunday meeting will close at 5:15 p.m.

Monday morning, September 19, at 8 a.m., the Committee will have an overview of the day's site visits and break into Subcommittees. The Family Caregiver Subcommittee will depart for Intermountain Healthcare in Afton, WY, at 8:45 a.m. The Pharmacy and HIT Subcommittees will depart for St. John's Medical Center in Jackson, WY, at 9 a.m. Transportation to these sites will not be provided to the public. The Subcommittees will reconvene at Spring Creek Ranch at 2 p.m. and break into subcommittee discussions. The Committee of the whole will reconvene at 4:30 p.m. for a brief discussion of the workplan. The Monday meeting will close at 5 p.m.

The final session will be convened Tuesday morning, September 20, at 8:30 a.m. The Committee will review the discussion of the 2006 Workplan and have updates on the Subcommittees site visits. The meeting will be adjourned at 10:30 a.m.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Committee should contact Tom Morris, M.P.A., Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray-Gibson, Office of Rural Health Policy (ORHP), telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov.*

Dated: August 15, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–16500 Filed 8–19–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Academic Public Private Partnership Program (AP4) Center Grant.

Date: September 8–9, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda, 5151 Pooks Hill Road, Bethesda, MD 20852.

Contact Person: Lalita D. Palekar, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–7405, (301) 496–7575.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16576 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Research Infrastructure.

Date: August 17, 2005.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michael H. Sayre, PhD, Health Scientific Administrator, Division of Research Infrastructure, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 924, MSC 4874, Bethesda, MD 20892–4874. 301–435–0962. *sayrem@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: August 30–31, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Wardman Park Washington DC Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, 6701

Democracy Blvd., One Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892–4874. 301–435–0814. *lambert@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16574 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Training and Education.

Date: November 3–4, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The O'Callaghan Hotel, 174 West Street, Annapolis, MD 21401.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, NCCAM, National Institutes of Health, Suite 401, MSC 5475, 6707 Democracy Blvd., Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel, Secondary Analysis of Data on CAM Use in Minority Populations.

Date: November 15, 2005.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Administrator, Office of Scientific Review, NCCAM, National Institutes of Health, Suite 401, MSC 5475, 6707 Democracy Blvd., Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov.*

Dated: August 12, 2005.

Anthony N. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16582 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee AA–1.

Date: October 13–14, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse & Alcoholism, Extramural Review Branch, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 443–2861, *skandasa@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee AA–3.

Date: October 20–21, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ernestine Vanderveen, PhD, Acting Chief, EPRB, NIH/NIAAA, Extramural Project Review Branch, 5635 Fishers Lane, Room 3039, Office of Extramural Activities, Bethesda, MD 20892–9304, (301) 443–2531, *tvanderv@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee AA–2.

Date: November 2–3, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse & Alcoholism, Office of Scientific Affairs, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, (301) 443–2369, *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Center Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16575 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–18, Review R21.

Date: September 14, 2005.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telphone conference call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–17, Review R21.

Date: September 26, 2005.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 05–93, Review R21.

Date: September 28, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administer, Scientific Review Branch, Division of Extramural Research, National Inst. of Dental & Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–14, Review R21.

Date: October 4, 2005.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–16, Review R21.

Date: October 7, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–12, Review RFA–DE–06–0002 Planning Grants.

Date: October 13–14, 2005.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PhD, Acting Director, Scientific Review Branch, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Inst. of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george_hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–04, Review of R21s (Biofilm/Micro).

Date: November 14, 2005.

Time: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN38E, Bethesda, MD 20892, (301) 594–3169, *hujing_liu@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 06–05, Review of R21s (Salivary and Soft Tissue).

Date: November 22, 2005.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN38E, Bethesda, MD 20892, (301) 594–3169, *yujing—liu@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16577 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Anion Transport in EPEC Induced Diarrhea.

Date: September 16, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Identification Isolation and Characterization of Prostate Cancer Stem Cells.

Date: September 17, 2005.

Time: 4:30 p.m. to 5:30 p.m.

Agenda: To review and grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: D.G. Patel, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7682. *pateldg@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematololgy Research, National Institutes of Health, HHS)

Dated: August 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16578 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 13, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Extramural Program, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892. (301) 594–2463. *kittc@niams.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16579 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Minority Biomedical Research Support Thematic Project Grants (S11).

Date: September 9, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference Call.)

Contact Person: Yan Z. Wang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892. (301) 594–4957. *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16580 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Open Architecture Research Interface for CI.

Date: September 15, 2005.

Time: 2 p.m. to 4 p.m.

*Agenda:*To review and evaluate contact proposals.

Place: National Institute of Health, 6120 Executive Blvd., Rockville, MD 20892 (Telephone conference call).

Contact Person: Da-yu Wu, PhD, Scientific Review Administrator, Scentific Review Branch, Division of Extramural Activities, Scientific Review Branch, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Suite 400C, Bethesda, MD 20892, 301–496–8683, *wudy@nidcd.nih.gov.*

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of P50 grant application.

Date: October 5, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone conference call).

Contact Person: Shiguang Yang, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: Communication Disorders Review Committee.

Date: October 19–20, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Melissa J. Stick, Phd, MPH, Chief, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892 (301)–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16581 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: September 6, 2005.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3119, Bethesda, Md 20817, (Telephone conference call).

Contact Person: John A. Bogdan, PhD, Scientific Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *jbogdan@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 12, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16583 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Safety and Immunogenicity of Vi Conjugate Typhoid Vaccine in Vietnamese Infants.

Date: August 29, 2005.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16584 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 27–28, 2005.

Closed: September 27, 2005, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Open: September 28, 2005, 8 a.m. to 2:15 p.m.

Agenda: Call to Order; Task Force on Minority Aging Research Report; Working Group on Program; Biology of Aging Program Review Report; and Program Highlights.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov.nia.naca/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16586 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Career Programs (K01s, K02s, K23s, and K24s). Also, Conference (R13s) and Research Project—Cooperative Agreements (U01s).

Date: September 8, 2005.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, National Institute of Arthritis, Musculoskeletal & Skin Diseases, National Institutes of Health, 6701 Democracy Blvd, Room 824, MSC 5872, Bethesda, MD 20892–4872, (301) 594–4955, *browneri@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16587 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Executive Function.

Date: August 26, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard; MSC 9529, Neuroscience Center; Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 15, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16588 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Three Immunology-Related Applications.

Date: August 16, 2005.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Mary Bell, PhD, Scientific Review Administrtor, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6188, MSC 7804, Bethesda, MD 20892, 301–451–8754, *bellmar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Medical Imaging: Improved Sensitivity MR Microscopy.

Date: August 16, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301)435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 98.893, National Institutes of Health, HHS)

Dated: August 11, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–16585 Filed 8–19–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4977–N–07]

Notice of Proposed Information Collection for Public Comment on the 2006 American Housing Survey—Metropolitan Sample

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 21, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202) 708–1060, Ext. 5887 (this is not a toll-free number), or Jane M. Kneessi, U.S. Census Bureau, HHES Division, Washington, DC 20233, (301) 763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) 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; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: 2006 American Housing Survey—Metropolitan Sample (AHS–MS).

OMB Control Number: 2528–0016.

Description of the need for the information and proposed use: The 2006 AHS-MS provides a periodic measure of the size and composition of the housing inventory in selected metropolitan areas. Title 12, United States Code, Sections 1701z–1, 1701z–2(g), and 1710z–10a mandate the collection of this information.

The 2006 survey is similar to previous AHS–MS surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies. Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand, and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time homebuyers.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–61, AHS–62, and AHS–63.

Members of affected public: Households.

Estimation of the total of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of respondents: 64,751.

Estimated responses per respondent: One every six years.

Time per respondent: 34 minutes.

Total hours to respond: 36,692.

Respondent's obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13, U.S.C., Section 9(a), and Title 12, U.S.C., Section 1701z-1 *et seq.*

Dated: August 16, 2005.

Harold L. Bunce,

Deputy Assistant, Secretary for Economic Affairs.

[FR Doc. 05–16604 Filed 8–19–05; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4950-N–14A]

Notice of HUD's Fiscal Year (FY) 2005 Notice of Funding Availability Policy Requirements and General Section to SuperNOFA for HUD's Discretionary Grant Programs; Housing Opportunities for Persons With AIDS (HOPWA); Second Competition Announcement

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Super Notice of Funding Availability (SuperNOFA) for HUD discretionary grant programs; Housing Opportunities for Persons With AIDS (HOPWA) program Notice of Funding Availability (NOFA); second competition announcement.

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development (HUD), Office of Community Planning and Development.

B. Funding Opportunity Title: FY2005 SuperNOFA; Housing Opportunities for Persons With AIDS (HOPWA) Program NOFA; second competition announcement.

C. Announcement Type: Second round competition.

D. Funding Opportunity Number: The **Federal Register** number for this NOFA is: FR–4950–N–14A. The OMB approval number for this program is 2506–0133.

E. Catalog of Federal Domestic Assistance (CFDA) Numbers: 14.241 Housing Opportunities for Persons With AIDS Program.

F. Dates: The application submission date for the second HOPWA NOFA competition is October 6, 2005.

G. Additional Overview Information: On March 21, 2005, HUD published its Fiscal Year (FY) 2005, Notice of Funding Availability (NOFA) Policy Requirements and General Section to the SuperNOFA for HUD's Discretionary Grant Programs. The Housing Opportunities for Persons with AIDS (HOPWA) Program NOFA competition, which was included in the SuperNOFA, closed on June 9, 2005. After reviewing and rating HOPWA applications submitted in response to the SuperNOFA, HUD anticipates that assistance will remain available for additional awards. As a result, through this notice published in today's **Federal Register**, HUD is announcing a second round of HOPWA funding.

Full Text of Announcement

I. Funding Opportunity Description

On March 21, 2005 (70 FR 13575), HUD published its FY2005 SuperNOFA. The HOPWA Program, which was included in the SuperNOFA, made approximately $37 million available in HUD assistance. The application submission date for the HOPWA Program NOFA was June 9, 2005.

HUD received 26 HOPWA applications in response to the FY2005 SuperNOFA. Of these applications, HUD received 25 through Grants.gov and one paper application under a waiver of the electronic filing requirement. Based on the number received and a review of these applications, HUD expects that a balance of grant funding will remain available after the selection of eligible awards from the list of applications received under the FY2005 SuperNOFA. Specifically, HUD anticipates that approximately $18 million in FY2005 funds will be available for additional awards. Therefore, HUD is announcing a second competition for HOPWA funds through the notice published in today's **Federal Register**. In order to give HOPWA applicants sufficient time to submit completed applications, this notice published in today's **Federal Register** announces that the application submission date for the HOPWA Program NOFA competition is October 6, 2005.

II. Eligibility Information

Applicability of SuperNOFA General Section and HOPWA Program NOFA Requirements and Selection Criteria to HOPWA Second Round of Competition

HUD published in its General Section (70 FR 13575) and the HOPWA Program NOFA (70 FR 14109) the HOPWA competition description, application submission requirements, and application selection criteria for the first round of HOPWA funding. All requirements, eligibility, thresholds, and selection criteria published in the SuperNOFA General Section and in the HOPWA Program NOFA, except for the requirement to obtain a waiver from the electronic submission requirement 30 days in advance of the program deadline and minor clarifications described in this notice, are applicable to this second competition. This notice clarifies section VI.A.5 of the General Section concerning debriefing. The debriefing period for all HOPWA applicants will begin 30 days after the awards are publicly announced for the second competition. HUD is also clarifying that approximately $9,052,000 in funds remaining from Fiscal Year 2004, as described in the March 21, 2005 HOPWA Program NOFA (see 70 FR 14110), will be obligated for awards under the first round of this competition. This second round competition makes available approximately $18,000,000 in FY2005 funds.

Applicants selected for an award under the first round of HOPWA funding are not eligible for an additional award from funds being made available under this second notice. Applicants are strongly encouraged to carefully read both the SuperNOFA General Section and the HOPWA Program NOFA published on March 21, 2005, in order to compete under this second round of HOPWA funding.

III. Application and Submission Instructions

All applicants must submit new applications in response to this announcement. If you submitted an application electronically through Grants.gov in response to the HOPWA competition announced in the March 21, 2005 SuperNOFA, you will be required to resubmit another complete application for consideration for this competition. Similarly, if you submitted an application in hard or paper copy, you will be required to submit another complete application.

Applicants submitting applications in response to this second round competition for HOPWA may download a new application and submit their applications electronically through Grants.gov or may submit hard copy or paper applications, at their choice. In addition, for this second round of HOPWA funding, an applicant may submit a paper application without requesting a waiver from this requirement. Applicants are encouraged to submit their applications through Grants.gov as described in the SuperNOFA. HUD does not intend to accept paper applications in the future without a waiver.

Applicants that choose to submit a paper application must submit an original and two copies to: HUD Headquarters; Robert C. Weaver Federal Building; 451 Seventh Street, SW., Room 7251, Washington, DC 20410–7000, Attention: HOPWA. Paper applications must be received no later than 5:15 p.m. eastern time on October 6, 2005.

As described in section IV.F.5.b of the General Section, an applicant submitting a paper application must use the United States Postal Service (USPS) to submit its application to HUD. An applicant must take its application to a post office to get a receipt of mailing that provides the date and time the package was submitted to the USPS. USPS rules now require that large packages must be brought to a postal facility for mailing. In many areas, the USPS has made a practice of returning to the sender, large packages that have been dropped in a mail collection box. Paper copy applications submitted to the USPS by the submission date and time and received by HUD no later than 15 days after the established submission date will receive funding consideration. If the USPS does not have a receipt with a digital time stamp, HUD will accept a receipt showing USPS Form 3817, Certificate of Mailing with a dated postmark. The proof of submission receipt provided by the Postal Service must show receipt no later than the application submission deadline. An applicant whose application is determined to be late, that cannot furnish HUD with a receipt from the USPS that verifies the package was submitted to the USPS prior to the submission due date and time will not receive funding consideration. An applicant may use any type of mail service provided by the USPS to have their application package delivered to HUD in time to meet the submission requirements.

HUD will not accept hand delivery of applications.

IV. Agency Contact

For further information, please contact: David Vos, Director, Office of HIV/AIDS Housing, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7212, Washington, DC 20410–7000; telephone 202–708–1934 (this is not a toll-free number). Persons with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Dated: August 11, 2005.

Pamela H. Patenaude,

Assistant Secretary for Community Planning and Development.

[FR Doc. E5–4546 Filed 8–19–05; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Greenville Rancheria's Trust Acquisition and Casino Project, Tehama County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the National Indian Gaming Commission as a cooperating agency, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed 333.66± acre trust acquisition and casino development project to be located in unincorporated Tehama County, California. The purpose of the proposed action is to help provide for the economic development of the Greenville Rancheria (Tribe). This notice also announces a public scoping meeting to identify potential issues, alternatives and content for inclusion in the EIS.

DATES: Comments on the scope and implementation of this proposal must arrive by September 23, 2005.

The public scoping meeting will be held September 7, 2005, from 6 p.m. to 9 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Clay Gregory, Regional Director, Pacific Region, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. Alternatively, comments may be submitted at the public scoping meeting.

The public scoping meeting will be held at the Red Bluff Senior Community Center, 1500 South Jackson Street, Red Bluff, California 96080.

FOR FURTHER INFORMATION CONTACT: Mr. John Rydzik, (916) 978–6042.

SUPPLEMENTARY INFORMATION: The Tribe proposes that 333.66± acres of land be taken into trust and that a casino, parking, and other facilities supporting the casino be constructed on the trust acquisition property. The 333.66± acre project site incorporates 4 parcels of land located within unincorporated Tehama County, California, 5 miles south of the city of Red Bluff and approximately 10 miles north of Corning. The site is bounded on the east by Interstate 5, to the northwest by the Corning Canal, to the south by Flores Avenue, and north and southwest by agricultural land.

The foreseeable components of the proposed action are a casino resort and associated facilities. The casino would be approximately 120,000 square feet and would include a main gaming floor, restaurant, buffet, gift shop, two cage areas, restrooms, security, surveillance, and back-of-the-house areas. Supporting infrastructure would include on-site wastewater treatment and disposal facilities, an onsite water system including a well, pump station, and storage tank, a stormwater detention basin, on site parking and a paved access road.

The proposed action and a reasonable range of alternatives, including a no-action alternative, will be analyzed in the EIS. Other possible alternatives currently under consideration are an alternate-use alternative and an off-site alternative located in Plumas County, California. Areas of environmental concern to be addressed in the EIS include land use, geology and soils, water resources, agricultural resources, biological resources, cultural resources, mineral resources, paleontological resources, traffic and transportation, noise, air quality, public health/environmental hazards, public services and utilities, hazardous waste and materials, socio-economics, environmental justice, and visual resources/aesthetics. The range of issues and alternatives addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: August 3, 2005.

Debbie L. Clark,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–16599 Filed 8–19–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Reconstruction of BIA Route 27 on the Pine Ridge Indian Reservation, SD

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the cooperation of the Oglala Sioux Tribe (Tribe), intends to gather the information necessary to prepare an Environmental Impact Statement (EIS) for the proposed reconstruction of BIA Route 27 near Wounded Knee, South Dakota. The BIA intends to coordinate the preparation of this EIS with consultations under the National Historic Preservation Act. The

purpose of the proposed action is to improve the roadway to current safety standards. This notice also announces a public scoping meeting to identify potential issues, alternatives and content to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by September 26, 2005.

The public scoping meeting will be held Tuesday, September 13, 2005, from 6:30 p.m. to 8:30 p.m., or until the last public comment is received.

ADDRESSES: You may mail or hand carry written comments to Marilyn Bercier, Bureau of Indian Affairs, Great Plains Regional Office, 115 4th Avenue SE., Aberdeen, South Dakota 57401.

The public scoping meeting will be held in the gymnasium at the Wounded Knee District School, 1 Main Street, Manderson, South Dakota.

FOR FURTHER INFORMATION CONTACT: Marilyn Bercier, (605) 226–7645.

SUPPLEMENTARY INFORMATION: The BIA and the Tribe propose to reconstruct BIA Route 27 from a point 5.3 miles northeast of its intersection with BIA Rt. 28 and then about 7.5 miles south and east to its intersection with State Highway 18. BIA Route 27 is located on the Pine Ridge Indian Reservation in Townships 36, 37 & 38 North and Ranges 42 & 43 West in Shannon County, South Dakota.

The purpose of the proposed reconstruction is to meet current safety guidelines. The existing asphalt surface is distressed and deteriorating. Numerous safety deficiencies include steep side slopes, abrupt vertical and horizontal curvatures, narrow roadway surfaces, steep in-slopes and back-slopes, protruding pipes, improper sight distances and roadside obstructions (trees) within clear zones. The highway provides residential access and serves as a major connector route to and from the Pine Ridge Community, but currently poses severe safety hazards to the members of the Tribe and the general traveling public.

Areas of environmental concern so far identified for analysis in the EIS include socio-economics, transportation, groundwater and surface water, wildlife and habitat, cultural resources, aesthetics, land uses, health and safety, and threatened, endangered, or special-status species. The range of issues to be addressed may be expanded based on comments received during the scoping process.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: August 8, 2005.

George T. Skibine,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–16600 Filed 8–19–05; 8:45 am]

BILLING CODE 4310–W7–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–385 and 386 (Second Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject reviews.

DATES: Effective August 15, 2005.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202) 205–3187 or e-mail at *fred.ruggles@usitc.gov*, Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On May 10, 2005, the Commission established a schedule for the conduct of the subject five-year reviews (70 FR 24613, May 10, 2005). Subsequently, the Commission determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). Therefore, the Commission is revising its schedule for the reviews.

The Commission's new schedule for the reviews is as follows: The prehearing staff report will be placed in the nonpublic record on August 25, 2005, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules; the deadline for filing prehearing briefs is October 14, 2005; requests to appear at the hearing must be filed with the Secretary to the Commission not later than October 11, 2005; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 18, 2005; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on October 25, 2005; the deadline for filing posthearing briefs is November 3, 2005; the Commission will make its final release of information on November 18, 2005; and final party comments are due on November 22, 2005.

For further information concerning these reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16543 Filed 8–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–472]

Probable Economic Effect of the Reduction of U.S. Tariffs: Update of Advice for Certain Items

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

DATES: Effective July 29, 2005.

SUMMARY: Following receipt of a request on July 29, 2005, from the U.S. Trade Representative (USTR), the Commission instituted investigation No. 332–472, Probable Economic Effect of the Reduction of U.S. Tariffs: Update of Advice for Certain Items, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

Background: In August 2002, at the request of the USTR, the Commission provided advice as to the probable economic effect of implementing certain tariff reduction scenarios (Inv. No. 332–440, Probable Economic Effect of the Reduction or Elimination of U.S. Tariffs). The advice was based on 2002 U.S. Harmonized Tariff System (HTS) nomenclature and 2000 trade data. In his letter of July 29, 2005, the USTR noted that U.S. imports of certain products have risen significantly since 2000, and directed that the Commission update its advice on products that have experienced a substantial increase in imports as defined by certain criteria.

As requested by the USTR, the Commission will provide advice as to the probable economic effect on industries producing like or directly competing articles and on consumers of reducing U.S. tariffs by 75 percent on dutiable imports from all U.S. trading partners for products (8-digit HTS items) that meet all of the following criteria:

- At least a 50-percent increase in the value of dutiable imports from 2000–2004;
- At least a $10 million increase in the value of dutiable imports from 2000–2004;
- Dutiable imports were valued at more than $500,000 in 2000;
- A 2004 *ad valorem* equivalent U.S. tariff on dutiable imports of at least 5 percent; and
- The Commission's 2002 advice for the item did not indicate a substantial adverse effect on U.S. industry as a result of U.S. tariff elimination.

The USTR requested that the Commission base its advice on 2005 HTS nomenclature and 2004 trade data. He also asked that the advice include a concordance to the 1996 Harmonized System nomenclature that is being used in the WTO negotiations. In addition, he requested that the report identify the five largest sources of dutiable imports (including import values) for each item analyzed under the criteria identified above. The USTR also asked that the Commission provide supplementary analysis that examines factors affecting trade and the competitive position of U.S. industry if, in conducting its analysis based on the more recent data, the Commission identifies items for which the 75 percent tariff reduction scenario indicates a greater adverse effect on U.S. industry than was indicated for those items under the tariff elimination scenario presented in the 2002 report.

As requested, the Commission will transmit its report by no later than December 13, 2005.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from George S. Serletis, Project Leader ((202) 205–3315 or *george.serletis@usitc.gov*), Laura A. Polly, Deputy Project Leader ((202) 205–3408 or *laura.polly@usitc.gov*), or Robert Carr, Deputy Project Leader ((202) 205–3405 or *robert.carr@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. The media should contact Peg O'Laughlin, Public Affairs Officer ((202) 205–1819 or *margaret.olaughlin@usitc.gov*). For information on legal aspects of this investigation, contact William Gearhart of the Office of General Counsel ((202) 205–3091 or *william.gearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://edis.usitc.gov/hvwebex.*

Written Submissions: Interested persons are invited to submit written statements concerning the investigation. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, and should be received no later than the close of business on September 16, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (*see* the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (*see* Handbook for Electronic Filing Procedures, *http://hotdocs.usitc.gov/pubs/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for CBI, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include some or all of any CBI submitted in the report it sends to the USTR. Because the USTR has indicated that portions of the Commission's report will be classified as ''confidential'' under Executive Order 12958 and that it also considers the Commission's report to be an inter-agency memorandum that will contain pre-decisional advice and be subject to the deliberative process privilege, the Commission does not plan to publish a public version of its report. Should the Commission later publish a public version, any CBI received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at (202) 205–2000.

Issued: August 16, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16542 Filed 8–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–470]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Review

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 9, 2005 of a request form the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–470, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Review.

Background: As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974, as amended (1974 Act), and under section 332(g) of the Tariff Act of 1930, the Commission will provide advice with respect to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP for HTS subheading 1302.39.0010. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of competitive need limits specified in section 503(c)(2)(A) of the 1974 Act. In his letter, the USTR also requested that the Commission provide advice, on a different time schedule, with respect to the probable economic effect of the elimination of U.S. duties on certain watches. The Commission will provide that advice in February 2006 in its report on investigation No. 332–471, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Special Review on Watches.

As requested by the USTR, the Commission will provide advice as to the probable economic effect on United States industries producing like or directly competitive articles and on consumers of the restoration of India for duty-free treatment under the GSP for HTS subheading 2916.39.15.

As requested by the USTR and in accordance with section 503(d)(1)(A) of the 1974 Act, the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for the Philippines for HTS subheading 0804.50.80; for Brazil for HTS subheading 4412.19.40; and for Turkey for HTS subheadings 6802.21.10 and 6802.91.20.

As requested by the USTR, the Commission will provide its advice no later than November 10, 2005. With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $115,000,000.

DATES: Effective Date: August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Project Leader, Cynthia B. Foreso ((202) 205–3348 or *cynthia.foreso@usitc.gov*). Deputy Project Leader, Alan Treat ((202) 205–3426 or *alan.treat@usitc.gov*).

The above persons are in the Commission's Office of Industries. For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091 or *william.gearhart@usitc.gov.* The media should contact Margaret O'Laughlin, Office of External Relations at (202) 205–1819 or *margaret.olaughlin@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://edis.usitc.gov/hvwebex.*

Public Hearing: A public hearing in connection with this investigation will be held beginning at 9:30 a.m. on September 29, 2005, at the United States International Trade Commission Building, 500 E Street SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on September 9, 2005, in accordance with the requirements in the ''Submissions'' section below.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. Any prehearing statements or briefs should be filed not later than 5:15 p.m., September 12, 2005; the deadline for filing posthearing statements or briefs is 5:15 p.m., October 7, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://hotdocs.usitc.gov/pubs/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at (202) 205–2000.

By order of the Commission.

Issued: August 15, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16544 Filed 8–19–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–471]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Special Review on Watches

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: Following receipt on August 9, 2005 of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–471, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Special Review on Watches.

Background: As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974, as amended (1974 Act), and under section 332(g) of the Tariff Act of 1930, the Commission will provide advice with respect to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP for the following HTS subheadings: 9102.11.10, 9102.11.25, 9102.11.30, 9102.11.45, 9102.19.20, 9102.19.40, and 9102.91.40. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of competitive need limits specified in section 503(c)(2)(A) of the 1974 Act. In his letter, the USTR also requested that the Commission provide advice concerning other modifications to the GSP as part of the 2005 review. The Commission will provide that advice in November 2005 in its report on investigation No. 332–470, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Review.

In addition, as requested by the USTR, the Commission will provide advice with respect to HTS subheadings 9102.11.10, 9102.11.25, 9102.11.30, 9102.11.45, 9102.19.20, 9102.19.40, and 9102.91.40, as to the probable economic effect on United States industries (defined for watches and watch bands, straps and bracelets as those located in the United States and United States insular possessions) manufacturing or assembling watches, watch bands, straps or bracelets of the elimination of U.S. import duties under the GSP program. In addition to advice on the probable economic effect on these industries as a single geographic unit, the Commission will also provide separate advice on the probable economic effect of such action on the watch manufacturing and assembly industry and the watch band, strap, and bracelet manufacturing and assembly industry and for each geographic area (the United States and the United States insular possessions).

As requested, the Commission will also provide, to the extent possible, data and analysis on the following factors for the most recent three year period for the United States industries (as defined above) manufacturing or assembling watches or manufacturing or assembling watch bands, straps or bracelets: annual production, capacity, capacity utilization, domestic shipments, exports, inventories, employment, wages, financial experience (including prices), the potential decline in output, market share, profits, productivity and return on investment, the potential negative effects on cash flow, the ability to raise capital and investment, any rapid increases in import penetration and the likelihood that such penetration will rise to an injurious level, factors affecting domestic prices, and any other factors that the Commission deems relevant. The Commission will also provide data for the most recent three-year period, to the extent possible, on the following factors for current and potential foreign producers: current and potential production capacity and capacity utilization, domestic shipments, and exports to the United States and other markets.

As requested by the USTR, the Commission will seek to provide its advice no later than February 17, 2006.

DATES: Effective August 9, 2005.

FOR FURTHER INFORMATION CONTACT: Project Leader, Cynthia B. Foreso ((202) 205–3348 or *cynthia.foreso@usitc.gov*) or Deputy Project Leader, Alan Treat ((202) 205–3426 or *alan.treat@usitc.gov*)

The above persons are in the Commission's Office of Industries. For more information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at (202) 205–3091 or *william.gearhart@usitc.gov.* The media should contact Margaret O'Laughlin, Office of External Relations at (202) 205–1819 or *margaret.olaughlin@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ONLINE) at *http://edis.usitc.gov/hvwebex.*

Public Hearing: A public hearing in connection with this investigation is scheduled to begin on September 29, 2005 following the close of the hearing on investigation No. 332–470, Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2005 Review (Investigation No. 332–470), at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) on September 9, 2005, in accordance with the requirements in the ''Submissions'' section below.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning these investigations. All written submissions, including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Any prehearing statements or briefs should be filed not later than 5:15 p.m., September 12, 2005; the deadline for filing posthearing statements or briefs is 5:15 p.m., November 7, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information

regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://hotdocs.usitc.gov/pubs/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the confidential business information submitted in the course of these investigations in the report it sends to the USTR. As requested by the USTR, the Commission will publish a public version of the report. However, in the public version, the Commission will not publish confidential business information in a manner that would reveal the operations of the firm supplying the information.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at (202) 205–2000.

By order of the Commission.

Issued: August 15, 2005

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–16606 Filed 8–19–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Report of Firearms Transactions.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 94, page 28319 on May 17, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Firearms Transactions.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: ATF F 5300.5. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The information collection documents transactions of firearms for law enforcement purposes. ATF uses the information to determine that the transaction is in accordance with laws and regulations, and establishes the person(s) involved in the transactions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 250 respondents will complete a 1-hour form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16549 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Records and Supporting Data: Daily Summaries, Records of Production, Storage, and Disposition, and Supporting Data by Licensed Explosives Manufacturers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for

''sixty days'' until October 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Taylor, Explosives Industry Programs Branch, Room 5000, 650 Massachusetts Ave., NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records and Supporting Data: Daily Summaries, Records of Production, Storage and Disposition and Supporting Data by Explosives Manufacturers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF REC 5400/2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. These records show daily activities in the manufacture, use, storage, and disposition of explosive materials by manufacturers. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversion will be readily apparent and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft. ATF requires that records be kept 5 years from the date a transaction occurs or until discontinuance of business or operations by the licensee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,008 respondents will take 15 minutes to maintain each record.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 130,520 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16551 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Firearms Disabilities for Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register**, Volume 70, Number 96, page 28957 on May 19, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Disabilities for Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The nonimmigrant alien information will be used to determine if a nonimmigrant alien is eligible to purchase, obtain, possess, or import a firearm. Nonimmigrant aliens also must maintain the documents while in possession of firearms or ammunition in the United States for verification purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that

12,100 respondents will take an estimated 6 minutes to report the information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,210 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16553 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 110, page 33761 on June 9, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit: Other: None. Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to supporting ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1,694 respondents will take 3 minutes to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 76,611 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16554 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated April 25, 2005, and published in the **Federal Register** on May 2, 2005, (70 FR 22704), Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State RD 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture the listed controlled substance in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Lilly Del Caribe, Inc. to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Lilly Del Caribe, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: August 15, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16564 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 25, 2004, Navinta LLC, 1499 Lower Ferry Road, Ewing, New Jersey 08616–1414, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Fentanyl (9801)	II
Sufentanil (9740)	II

The company plans to bulk manufacture the controlled substances for product development of generic and brand pharmaceutical products.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than October 21, 2005.

Dated: August 15, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16567 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated April 25, 2005, and published in the **Federal Register** on May 2, 2005, (70 FR 22704), Roche Diagnostics Operations Inc., Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinol (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Roche Diagnostics Operations Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Roche Diagnostics Operations Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 15, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16568 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 29, 2005, and published in the **Federal Register** on April 5 2005 (70 FR 17263), Stepan Company, Natural Products Dept., 100 W. Hunter Avenue, Maywood, New Jersey 07607, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II.

Drug	Schedule
Cocaine (9041)	II
Benzoylecgonine (9180)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Stepan Company to manufacture the listed basic class of controlled substances is consistent with the public interest at this time. DEA has investigated Stepan Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substances listed.

Dated: August 15, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16566 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated March 29, 2005, and published in the **Federal Register** on April 6, 2005, (70 FR 17474–17475), Varian, Inc., Lake Forest, 25200 Commercentre Drive, Lake Forest, California 92630–8810, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic class of controlled substances listed in Schedule II:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexane-carbonitrile (8603)	II
Benzoylecgonine (9180)	II

The company plans to manufacture small quantities of the listed controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Varian, Inc. to manufacture the listed basic class of controlled substances is consistent with the public interest at this time. DEA has investigated Varian, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substances listed.

Dated: August 15, 2005.

William J. Walker,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 05–16565 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: 2005 Census of Publicly Funded Forensic Crime Laboratories.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Hickman, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* 2005 Census of Publicly Funded Forensic Crime Laboratories.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: The form number is CFCL–1, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government. This information collection is a census of public crime laboratories that perform forensic analyses on criminal evidence. The information will provide statistics on laboratories' capacity to analyze forensic crime evidence, the number, types, and sources of evidence received per year, and the number, types, and costs of analyses completed.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* It is estimated that 375 respondents will complete a three hour form.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are an estimated 1,125 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16547 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Requested

ACTION: 60-day notice of information collection under review: 2006 Census of Adult Parole Supervising Agencies.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 21, 2005. This process is in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lawrence Greenfeld, Director, Bureau of Justice Statistics, 810 Seventh St. NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

—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;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection: (1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *The Title of the Form/Collection:* 2006 Census of Adult Parole Supervising Agencies.

(3) *The Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* Form: CJ–36. Corrections Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected Public Who Will Be Asked To Respond, as Well as a Brief Abstract:* Primary: State Departments of Corrections or State Parole authority. Others: The Federal Bureau of Prisons. For the CJ–36 form, 54 central reporters (two State jurisdictions in California and one each from the remaining States, the District of Columbia, the Federal Bureau of Prisons, and one local authority) responsible for keeping records on parolees will be asked to provide information for the following categories:

(a) Whether the parole agency is located within the executive or judicial branch of government, whether it is a private organization under contract to a government agency; and whether the agency is administered by the Department of Corrections, a court, an independent agency or another parole agency;

(b) As of June 30, 2006, the number of adult parolees under their jurisdiction;

(c) As of June 30, 2006, the number of adult parolees under their jurisdiction who were supervised following a discretionary release, a mandatory release, a special conditional release, or other type of release from prison;

(d) Whether the adult parole supervising agency also supervises either adult probationers or juveniles on probation or parole/aftercare, and the number of each under supervision on June 30, 2006;

(e) Whether the adult parole supervising agency conducts prison release hearings; and between July 1, 2005 and June 30, 2006, the number of prisoners considered for release and the number of prisoners released;

(f) Whether the adult parole supervising agency sets the terms/conditions of adult parole supervision and, if not, who does;

(g) Between July 1, 2005 and June 30, 2006, the number of adult parole revocation hearings conducted by the adult parole supervising agency; or who has responsibility for conducting adult parole revocation hearings;

(h) On June 30, 2006, the number of adult parolees under their jurisdiction who were active, inactive, absconders, or supervised out of state;

(i) On June 30, 2006, the number of parolees required to have face-to-face contact with a parole officer at least once per week, once per month, and less than once per month; the number of parolees no longer required to report on a regular basis; and the number of parolees released from prison for whom a reporting frequency had not been determined;

(j) On June 30, 2006, the number of full-time and part-time payroll staff, nonpayroll staff, and contract staff employed by the agency;

(k) On June 30, 2006, the number of full-time and part-time male and female staff employed by the agency;

(l) On June 30, 2006, the number of full-time equivalent staff who directly supervised adults who were active on parole;

(m) Between July 1, 2005 and June 30, 2006, the number of parolees returned to incarceration because of a drug violation;

(n) As of June 30, 2006, whether any parolees were enrolled in a drug treatment program; and the number in a drug treatment program run by a formally trained drug treatment professional, and the number in a self-help or drug awareness program;

(o) As of June 30, 2006, the number of parolees enrolled in a sex offender treatment program;

(p) As of June 30, 2006, the number of parolees enrolled in a mental health treatment program run by a formally trained mental health professional;

(q) Whether on June 30, 2006, the parole agency had a program that provided assistance to adult parolees in obtaining housing, and the type of program;

(r) Whether on June 30, 2006, the parole agency had a program that provided assistance to adult parolees in obtaining employment, and the type of program;

(s) On June 30, 2006, the number of separate offices in the parole agency;

(t) The number of adult parolees under supervision at the headquarters office on June 30, 2006;

(u) The name of any regional or district office with which the headquarters office is co-located;

(v) As of June 30, 2006, the number of adult parolees under supervision at each regional or district office (including field offices located within that administrative unit); and

(w) As of June 30, 2006, the number of field offices located within each of the regional or district offices which supervised adult parolees.

The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* It is estimated that approximately 54 respondents will each take an average of 3 hours to respond.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* It is estimated that there will be 162 hours associated with this collection.

If additional information is required, contact: Ms. Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 05–16548 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Census of Juveniles in Residential Placement.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP), has submitted the following information collection request to the Office of Management and Budget

(OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Janet Chiancone, (202) 353–9258, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of previously approved collection.

(2) *The Title of the Form/Collection:* Census of Juveniles in Residential Placement.

(3) *The Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* The form number is CJ–14, Office of Juvenile Justice and Delinquency Prevention, United States Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: Federal Government. Other: State, Local or Tribal Government, not-for-profit institutions, business or other for-profit. The data collection will gather individual level information on juveniles (persons under 18) who are placed in a residential facility due to contact with the justice system.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond/Reply:* It is estimated that 3,500 respondents will complete the questionnaire in approximately 3 hours.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are approximately 11,550 hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16550 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: 2005 Census of State and Federal Correctional Facilities.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 70, Number 114, page 34796 on June 15, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 21, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* 2005 Census of State and Federal Correctional Facilities.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* Form Number: CJ–43, Bureau of Justice Statistics, Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as Well as a Brief Abstract:* Primary: Federal, State, and District prison authorities. The Census of State and Federal Correctional Facilities obtains information on each type of facility designed to house adults sentenced to confinement by State, District, or Federal court. These facilities include prisons, penitentiaries, and correctional institutions; boot camps; prison farms; reception,

diagnostic, and classification centers; road camps; forestry and conservation camps; youthful offender facilities (except in California); vocational training facilities; prison hospitals; drug and alcohol treatment facilities; and State operated local detention facilities.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond/reply:* It is estimated that 1,700 respondents will complete a 3-hour census form.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are an estimated 5,100 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 17, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–16552 Filed 8–19–05; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Black Stallion Coal Company, LLC

[Docket No. M–2005–055–C]

Black Stallion Coal Company, LLC, 500 Lee Street, P.O. Box 1189, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords) to its Black Stallion Mine (MSHA I.D. No. 40–09086) located in Boone County, West Virginia. The petitioner proposes to use 900 feet of trailing cable on Roof bolters and Mobil Roof Supports. The petitioner states that this proposed alternative method will only apply to trailing cables that supply 480-volt, three-phase, alternating current to roof bolters and mobile roof supports. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Hawthorne Coal Company, LLC

[Docket No. M–2005–056–C]

Hawthorne Coal Company, LLC, 2708 Cranberry Square, Morgantown, West Virginia 26505 has filed a petition to modify the application of 30 CFR 77.214(a) to its Hawthorne Preparation Plant (MSHA I.D. No. 46–05544) located in Upshur County, West Virginia. The petitioner requests a modification of the existing standard to permit the extension of Hawthorne's Reed Hollow Refuse Pile over four sealed openings to the Grand Badger Mine No. 1A, now owned by Hawthorne which was abandoned in 1986. The petitioner states that a fifth opening will not be affected by the refuse pile expansion. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. McElroy Coal Company

[Docket No. M–2005–057–C]

McElroy Coal Company, RD#4, Box 425, Moundsville, West Virginia 26041 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its McElroy Mine (MSHA I.D. No. 46–01437) located in Marshall County, West Virginia. The petitioner proposes to construct a soil buffer zone around the escape shaft with a minimum radius of 50-feet rather than the required radius of 300-feet. The petitioner states that the soil in the 50-foot buffer zone will be placed in maximum 12-inch thick loose lifts and will be compacted to a minimum of 95 percent of the standard Proctor maximum dry density as determined by ASTM D 698; the soil will be within −2 percent to +3 percent of the material's optimum moisture content as determined by ASTM D 698; and coarse refuse will be placed in the remainder of the 300-foot radius. The petitioner asserts that to construct a 300-foot soil buffer zone does not significantly increase the safety concerns related to the shaft structure and the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Dodge Hill Mining Company, LLC

[Docket No. M–2005–058–C]

Dodge Hill Mining Company, LLC, P.O. Box 165, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1101–1(b) (Deluge-type water spray systems) to its Dodge Hill Mine #1 (MSHA I.D. No. 15–18335) located in Union County, Kentucky. The petitioner requests a modification of the existing standard to permit a variance from the use of dust covers. The petitioner instead proposes to have a person who is trained in the testing procedures specific to the deluge-type water spray fire suppression systems used at each belt drive to once a week conduct a visual examination of each of the deluge-type water spray fire suppression systems; conduct a functional test of the deluge-type water spray fire suppression system by actuating the system and observing its performance; and record the results of the examination and functional test in a book provided on the surface available for authorized representatives of the Secretary and retained for one year. The petitioner states that all nozzles that are determined to be clogged or malfunctioning will be corrected immediately. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Hopkins County Coal, LLC

[Docket No. M–2005–059–C]

Hopkins County Coal, LLC, 2668 St. Rt. 120E, Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its Elk Creek Mine (MSHA I.D. No. 15–28816) located in Hopkins County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells in all mineable coalbeds. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Simplot Phosphates, LLC

[Docket No. M–2005–002–M]

Simplot Phosphates, LLC, 9401 North Highway 191, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 56.9300 (Berms or guardrails) to its Vernal Pit and Mill (MSHA I.D. No. 42–00998) located in Unitah County, Utah. The petitioner requests a modification of the existing standard to permit an alternative method of compliance during construction work on a tailings dam impoundment. The petitioner proposes to raise the height to the dam in several lift phases during tailings dam construction. The lift phases will occur roughly every other year depending on recoveries, evaporation, annual precipitation, and size of lift phases. The petitioner states that the lift phases are typically scheduled during the summer season to avoid poor weather conditions. The petitioner asserts that the proposed alternative method would

provide at least the same measure of protection as the existing standard.

7. Unimin Corporation

[Docket No. M–2005–003–M]

Unimin Corporation, 258 Elm Street, New Canaan, Connecticut 06840 has filed a petition to modify the application of 30 CFR 56.13020 (Use of compressed air) to its Unimin Hamilton Operation (MSHA I.D. No. 45–00779) located in Skagit County, Washington. The petitioner proposes to implement a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH). The petitioner states that the process utilizes controlled compressed air for the purpose of cleaning miners' dust laden clothing. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Unimin Corporation

[Docket No. M–2005–004–M]

Unimin Corporation, 258 Elm Street, New Canaan, Connecticut 06840 has filed a petition to modify the application of 30 CFR 56.13020 (Use of compressed air) to its Unimin McIntyre Operation (MSHA I.D. No. 09–00128) located in Wilkinson County, Georgia. The petitioner proposes to implement a clothes cleaning booth process that has been jointly developed with and successfully tested by the National Institute for Occupational Safety and Health (NIOSH). The petitioner states that the process utilizes controlled compressed air for the purpose of cleaning miners' dust laden clothing. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Phelps Dodge Bagdad

[Docket No. M–2005–005–M]

Phelps Dodge Bagdad, 100 Main Street, Bagdad, Arizona 86321 has filed a petition to modify the application of 30 CFR 56.6309 (Fuel oil requirements for ANFO) to its Bagdad Mine (MSHA I.D. No. 02–00137) located in Yavapai County, Arizona. The petitioner proposes to use recycled waste oil blended with diesel fuel to produce ammonium nitrate-fuel oil for use as a blasting agent. The petitioner has listed specific procedures in this petition for modification that would be followed when the proposed alternative method is implemented. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* E-mail: *zzMSHA-Comments@dol.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before September 21, 2005. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 17th day of August 2005.

Rebecca J. Smith,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 05–16625 Filed 8–19–05; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 AND 50–425]

Southern Nuclear Operating Company, Inc.; 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 amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued Southern Nuclear Operating Company, Inc. (SNC), for operation of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2, located in Burke County, Georgia.

The proposed amendment would revise, on a one-time basis, Technical Specification (TS) 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to incorporate changes in the SG inspection scope for VEGP, Unit 2 during Refueling Outage 11 and the subsequent operating cycle. The proposed changes are applicable to Unit 2 only for inspections during Refueling Outage 11 and for the subsequent operating cycle. The proposed changes modify the inspection requirements for portions of SG tubes within the hot leg tubesheet region of the SGs. The license for VEGP, Unit 1 is affected only due to the fact that Units 1 and 2 use common TSs.

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.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 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:

SNC has evaluated whether or not a significant hazards consideration is involved with the proposed changes by focusing on the three standards set forth in 10 CFR 50.92, ''Issuance of Amendment,'' as discussed below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed changes that alter the SG inspection criteria do not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed changes will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed changes to the SG tube inspection criteria, are the SG tube rupture (SGTR) event and the steam line break (SLB) accident.

During the SGTR event, the required structural integrity margins of the SG tubes will be maintained by the presence of the SG tubesheet. SG tubes are hydraulically expanded in the tubesheet area. Tube rupture in tubes with cracks in the tubesheet is precluded by the constraint provided by the tubesheet. This constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and tubesheet and from the differential pressure between the primary and secondary side. Based on this design, the structural margins against burst, discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactor] SG Tubes,''

are maintained for both normal and postulated accident conditions.

The proposed changes do not affect other systems, structures, components or operational features. Therefore, the proposed changes result in no significant increase in the probability of the occurrence of a SGTR accident. At normal operating pressures, leakage from primary water stress corrosion cracking (PWSCC) below the proposed limited inspection depth is limited by both the tube-to-tubesheet crevice and the limited crack opening permitted by the tubesheet constraint. Consequently, negligible normal operating leakage is expected from cracks within the tubesheet region. The consequences of an SGTR event are affected by the primary-to-secondary leakage flow during the event.

Primary-to-secondary leakage flow through a postulated broken tube is not affected by the proposed change since the tubesheet enhances the tube integrity in the region of the hydraulic expansion by precluding tube deformation beyond its initial hydraulically expanded outside diameter.

The probability of a SLB is unaffected by the potential failure of a SG tube as this failure is not an initiator for a SLB.

The consequences of a SLB are also not significantly affected by the proposed changes. During a SLB accident, the reduction in pressure above the tubesheet on the shell side of the SG creates an axially uniformly distributed load on the tubesheet due to the reactor coolant system pressure on the underside of the tubesheet. The resulting bending action constrains the tubes in the tubesheet thereby restricting primary-to-secondary leakage below the midplane.

Primary-to-secondary leakage from tube degradation in the tubesheet area during the limiting accident (i.e., SLB) is limited by flow restrictions resulting from the crack and tube-to-tubesheet contact pressures that provide a restricted leakage path above the indications and also limit the degree of potential crack face opening as compared to free span indications. The primary-to-secondary leak rate during postulated SLB accident conditions would be expected to be less than that during normal operation for indications near the bottom of the tubesheet (i.e., including indications in the tube end welds). This conclusion is based on the observation that while the driving pressure causing leakage increases by approximately a factor of two, the flow resistance associated with an increase in the tube-to-tubesheet contact pressure, during a SLB, increases by up to approximately a factor of three. While such a leakage decrease is logically expected, the postulated accident leak rate could be conservatively bounded by twice the normal operating leak rate if the increase in contact pressure is ignored. Since normal operating leakage is administratively limited (by NEI [Nuclear Energy Institute] 97–06) to less than 0.10 gpm (150 gpd) in the Vogtle Unit 2 steam generators, the attendant accident condition leak rate, assuming all leakage to be from lower tubesheet indications, would be bounded by 0.20 gpm, which is less than the accident analysis assumption of 0.35 gpm included in Section 15.1.5 of the Vogtle Unit 2 UFSAR. Hence it is reasonable to omit any consideration of inspection of the tube, tube end weld, bulges/overexpansions or other anomalies below 17 inches from the top of the hot leg tubesheet. Therefore, the consequences of a SLB accident remain unaffected.

Based on the above discussion, the proposed changes do not involve an increase in the consequences of an accident previously evaluated.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes do not involve the use or installation of new equipment and the currently installed equipment will not be operated in a new or different manner. No new or different system interactions are created and no new processes are introduced. The proposed changes will not introduce any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Based on this evaluation, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes maintain the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute (NEI) 97–06, ''Steam Generator Program Guidelines,'' Revision 1 and Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes,'' are used as the bases in the development of the limited hot leg tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor coolant pressure boundary,'' GDC 15, ''Reactor coolant system design,'' GDC 31, ''Fracture prevention of reactor coolant pressure boundary,'' and GDC 32, ''Inspection of reactor coolant pressure boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

Application of the limited hot leg tubesheet inspection depth criteria will preclude unacceptable primary-to-secondary leakage during all plant conditions. The methodology for determining leakage provides for large margins between calculated and actual leakage values in the proposed limited hot leg tubesheet inspection depth criteria.

Therefore, the proposed changes do not involve a significant hazards consideration under the criteria set forth in 10 CFR 50.92(c).

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 30 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 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after 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, Public File Area O1 F21, 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'' 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 O1F21, 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 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 is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include 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 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 Arthur H. Domby, Esquire, Troutman Sanders, NationsBank Plaza, 600 Peachtree Street, NE., Suite 5200, Atlanta, GA 30308–2216, the attorney for the licensee.

For further details with respect to this action, see the application for amendment dated August 12, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 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/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of August 2005.

For the Nuclear Regulatory Commission.

Christopher Gratton,

Sr. Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4554 Filed 8–19–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice

announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of an information collection. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or ''transfer'' of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, *i.e.* members of the public, is subject to the Paperwork Reduction Act.

Approximately 100 SF 2817 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Christopher N. Meuchner, Life Insurance & Long Term Care Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2H22, Washington, DC 20415–3661; and Brenda Aguilar, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group. (202) 606–0623.

U.S. Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. 05–16589 Filed 8–19–05; 8:45 am]

BILLING CODE 6325–38–U

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Quasette Crowner, Chief, Executive Resources Group, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, by phone, 202–606–8046.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between July 1, 2005, and July 31, 2005. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments were approved for June 2005.

Schedule B

No Schedule B appointments were approved for June 2005.

Schedule C

The following Schedule C appointments were approved during June 2005:

Section 213.3303 Executive Office of the President

Council on Environmental Quality

EQGS00022 Deputy Director for Communications to the Associate Director for Communications.

Effective July 06, 2005.

Office of Science and Technology Policy

TSGS00001 Confidential Assistant to the Chief of Staff. Effective July 26, 2005.

Section 213.3304 Department of State

DSGS60983 Staff Assistant to the Chief of Protocol. Effective July 11, 2005.

DSGS60978 Director, New Partner Outreach to the HIV/AIDS Coordinator. Effective July 18, 2005.

DSGS60982 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison.

Effective July 18, 2005.

DSGS60973 Chief of Staff to the Director, Policy Planning Staff. Effective July 19, 2005.

DSGS60980 Staff Assistant to the Under Secretary for Arms Control and Security Affairs. Effective July 19, 2005.

DSGS60979 Special Assistant to the Assistant Secretary. Effective July 20, 2005.

DSGS60976 Special Assistant to the Senior Advisor to the Secretary and White House Liaison.

Effective July 22, 2005.

DSGS60984 Special Assistant to the Senior Advisor to the Secretary and White House Liaison.

Effective July 22, 2005.

Section 213.335 Department of the Treasury

DYGS00455 Special Assistant to the Deputy Assistant Secretary (Financial Education). Effective July 07, 2005.

DYGS00459 Special Assistant to Director of Legislative and Intergovernmental Affairs. Effective July 15, 2005.

DYGS60307 Senior Advisor to the Treasurer of the United States. Effective July 18, 2005.

DYGS00416 Senior Advisor to the Assistant Secretary (Management) and Chief Financial Officer. Effective July 22, 2005.

DYGS00460 Senior Advisor to the Under Secretary for Enforcement. Effective July 22, 2005.

Section 213.3306 Department of Defense

DDGS16877 Personal and Confidential Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict). Effective July 11, 2005.

DDGS16881 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective July 11, 2005.

DDGS16882 Staff Assistant to the Principal Deputy Assistant Secretary of Defense (International Security Policy). Effective July 11, 2005.

DDGS16874 Confidential Assistant to the Assistant Secretary of Defense (Reserve Affairs). Effective July 12, 2005.

DDGS16885 Public Affairs Specialist to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective July 18, 2005.

Section 213.3307 Department of the Army

DWGS60015 Special Assistant for Business System Analysis to the Secretary of the Army. Effective July 19, 2005.

Section 213.3310 Department of Justice

DJGS00238 Press Assistant to the Director, Office of Public Affairs. Effective July 06, 2005.

DJGS00307 Associate Director to the Director, Office of Intergovernmental and Public Liaison. Effective July 06, 2005.

DJGS00337 Special Assistant to the Special Counsel. Effective July 06, 2005.

Section 213.3311 Department of Homeland Security

DMGS00346 Executive Assistant to the Counselor to the Deputy Secretary. Effective July 06, 2005.

DMGS00379 Legislative Assistant to the Director of Legislative Affairs for Border and Transportation Security. Effective July 08, 2005.

DMGS00381 Speechwriter to the Director of Communications. Effective July 08, 2005.

DMGS00384 Confidential Assistant to the Executive Secretary. Effective July 11, 2005.

DMGS00380 Public Affairs Specialist to the Deputy Assistant Secretary for Public Affairs. Effective July 12, 2005.

DMGS00382 Press Assistant to the Deputy Assistant Secretary for Public Affairs. Effective July 12, 2005.

DMGS00388 Policy Analyst to the Chief of Staff and Senior Policy Advisor. Effective July 15, 2005.

DMGS00389 Writer-Editor and Protocol Coordinator to the Executive Secretary. Effective July 15, 2005.

DMGS00390 Public Affairs Assistant, Information Analysis and Infrastructure Protection to the Deputy Assistant Secretary for Public Affairs. Effective July 15, 2005.

DMGS00386 Legislative Assistant to the Assistant Secretary for Legislative Affairs. Effective July 18, 2005.

DMGS00372 Protocol Coordinator to the Director of Scheduling and Advance. Effective July 26, 2005.

DMGS00385 Advance Representative to the Director of Scheduling and Advance. Effective July 26, 2005.

DMGS00374 Senior Advisor to the Officer of Civil Rights and Civil Liberties. Effective July 28, 2005.

DMGS00391 Press Assistant to the Director of Communications, Office of Domestic Preparedness. Effective July 28, 2005.

DMGS00392 Associate Executive Secretary for Correspondence to the Executive Secretary. Effective July 29, 2005.

DMOT00394 Director, Stakeholder and Industry Affairs to the Assistant Administrator for Transportation Security Policy. Effective July 29, 2005.

Section 213.3312 Department of the Interior

DIGS61040 Special Assistant to the Solicitor. Effective July 13, 2005.

DIGS01041 Special Assistant, Advance to the Director, Scheduling and Advance. Effective July 14, 2005.

DIGS01042 Special Assistant to the White House Liaison. Effective July 14, 2005.

Section 213.3313 Department of Agriculture

DAGS00809 Special Assistant to the Deputy Administrator, Program Operations. Effective July 08, 2005.

DAGS00811 Staff Assistant to the Chief, Natural Research Conservation Service. Effective July 08, 2005.

DAGS00808 Special Assistant to the Chief, Natural Research Conservation Service. Effective July 11, 2005.

DAGS00812 Staff Assistant to the Chief, Natural Research Conservation Service. Effective July 15, 2005.

DAGS00813 Confidential Assistant to the Deputy Assistant Secretary. Effective July 22, 2005.

Section 213.3314 Department of Commerce

DCGS00405 Chief of Staff to the Assistant Secretary and Director General of the United States Commercial Service. Effective July 08, 2005.

DCGS60001 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison. Effective July 08, 2005.

DCGS60415 Legislative Affairs Specialist to the Director, Office of Legislative Affairs. Effective July 08, 2005.

DCGS00342 Deputy Director to the Director Office of Liaison. Effective July 14, 2005.

Section 213.3315 Department of Labor

DLGS60139 Special Assistant to the Secretary of Labor. Effective July 06, 2005.

DLGS60114 Special Assistant to the Assistant Secretary for Public Affairs. Effective July 14, 2005.

DLGS60132 Special Assistant to the Secretary of Labor. Effective July 14, 2005.

DLGS60261 Special Assistant to the Deputy Assistant Secretary for Mine Safety and Health. Effective July 14, 2005.

Section 213.3316 Department of Health and Human Services

DHGS00666 Deputy Director for Intergovernmental Affairs (Operations) to the Director of Intergovernmental Affairs. Effective July 26, 2005.

DHGS60418 Confidential Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy). Effective July 28, 2005.

Section 213.3317 Department of Education

DBGS00408 Confidential Assistant to the Director, White House Initiative on Tribal Colleges and Universities. Effective July 12, 2005.

DBGS00407 Director, Office of International Relations to the Chief of Staff. Effective July 13, 2005.

DBGS00409 Deputy Assistant Secretary to the Assistant Secretary for Vocational and Adult Education. Effective July 20, 2005.

DBGS00410 Confidential Assistant to the Chief of Staff. Effective July 21, 2005.

DBGS00411 Special Assistant to the Chief of Staff. Effective July 22, 2005.

DBGS00412 Director, International Affairs Office to the Chief of Staff. Effective July 22, 2005.

DBGS00413 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective July 22, 2005.

DBGS00414 Deputy Assistant Secretary for Evaluation to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective July 22, 2005.

DBGS00415 Confidential Assistant to the Assistant Secretary for Planning, Evaluation, and Policy Development. Effective July 22, 2005.

DBGS00416 Deputy Assistant Secretary to the Assistant Secretary for Vocational and Adult Education. Effective July 28, 2005.

Section 213.3318 Environmental Protection Agency

EPGS05016 Deputy to the Press Secretary to the Associate Administrator for Public Affairs. Effective July 06, 2005.

EPGS05013 Special Assistant to the Deputy Associate Administrator for Public Affairs to the Deputy Associate Administrator. Effective July 29, 2005.

Section 213.3325 United States Tax Court

JCGS60066 Trial Clerk to the Chief Judge. Effective July 15, 2005.

JCGS60067 Trial Clerk to the Chief Judge. Effective July 15, 2005.

JCGS60068 Trial Clerk to the Chief Judge. Effective July 15, 2005.

Section 213.3327 Department of Veterans Affairs

DVGS60098 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective July 19, 2005.

Section 213.3330 Securities and Exchange Commission

SEOT60060 Confidential Assistant to a Commissioner. Effective July 26, 2005.

Section 213.3331 Department of Energy

DEGS00477 Policy Advisor to the Director, Office of Science. Effective July 06, 2005.

DEGS00478 Special Assistant to the Director, Office of Scheduling and Advance. Effective July 07, 2005.

DEGS00479 Deputy Assistant Secretary for Environment and Science to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 07, 2005.

DEGS00481 Congressional Affairs Officer to the Director of Congressional, Intergovernmental and Public Affairs. Effective July 13, 2005.

DEGS00476 Policy Advisor to the Director Office of Worker and Community Transition. Effective July 14, 2005.

DEGS00480 Senior Policy Advisor for Middle East Affairs to the Assistant Secretary for Policy and International Affairs. Effective July 15, 2005.

DEGS00467 Special Assistant to the Associate Director. Effective July 18, 2005.

DEGS00482 Policy Advisor to the Assistant Secretary for Environment, Safety and Health. Effective July 29, 2005.

DEGS00483 Director, Communications and Speechwriting to the Director, Public Affairs. Effective July 29, 2005.

Section 213.3332 Small Business Administration

SBGS00588 Director, External Affairs to the Associate Administrator for Strategic Alliances. Effective July 12, 2005.

SBGS00589 Legislative Assistant to the Associate Administrator for Congressional and Legislative Affairs. Effective July 20, 2005.

Section 213.3333 Federal Deposit Insurance Corporation

FDOT00012 Director for Public Affairs to the Chairman of the Board of Directors (Director). Effective July 20, 2005.

Section 213.3337 General Services Administration

GSGS00166 Deputy Associate Administrator for Small Business Utilization to the Associate Administrator for Small Business Utilization. Effective July 15, 2005.

GSGS00167 Confidential Assistant to the Chief Acquisition Officer. Effective July 28, 2005.

Section 213.3343 Farm Credit Administration

FLOT00028 Director, Congressional and Public Affairs to the Chairman. Effective July 19, 2005.

Section 213.3379 Commodity Futures Trading Commission

CTOT00030 Chief of Staff to the Chairperson. Effective July 28, 2005.

Section 213.3384 Department of Housing and Urban Development

DUGS60490 Special Policy Advisor to the Assistant Secretary for Community Planning and Development. Effective July 06, 2005.

DUGS60456 Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective July 11, 2005.

DUGS60028 Staff Assistant to the Assistant Deputy Secretary for Field Policy and Management. Effective July 28, 2005.

Section 213.3394 Department of Transportation

DTGS60070 Special Assistant to the Assistant Secretary for Governmental Affairs. Effective July 07, 2005.

DTGS60376 Director, Office of Small and Disadvantaged Business Utilization to the Secretary. Effective July 14, 2005.

Section 213.3396 National Transportation Safety Board

TBGS60105 Confidential Assistant to the Vice Chairman. Effective July 12, 2005.

Section 213.33 National Endowment for the Humanities

NHGS00078 Assistant Director for Communications to the Director of Communications. Effective July 18, 2005.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Linda M. Springer,

Director, Office of Personnel Management.

[FR Doc. 05–16590 Filed 8–19–05; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52266; File No. 10–136]

Acknowledgment of Receipt of Notice of Registration as a National Securities Exchange Pursuant to Section 6(g) of the Securities Exchange Act of 1934 by the CBOE Futures Exchange, LLC

August 15, 2005.

Section 6(g) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] provides that an exchange may register as a national securities exchange for the sole purpose of trading security futures products by filing a written notice with the Securities and Exchange Commission (''Commission'') if such exchange is a board of trade, as that term is defined by the Commodity Exchange Act,[2] that is designated as a contract market by the Commodity Futures Trading Commission or registered as a derivative transaction execution facility under Section 5a of the Commodity Exchange Act.[3] Rule 6a-4 under the Exchange Act[4] requires that such an exchange submit written notice of registration to the Commission on Form 1–N.[5] An exchange's registration as a national securities exchange becomes effective contemporaneously with the submission of the written notice on Form 1–N.[6]

On July 26, 2005, the CBOE Futures Exchange, LLC (''CFE'') filed a Form 1–N with the Commission. Pursuant to section 6(g)(3) of the Exchange Act,[7] the Commission hereby acknowledges receipt of the Form 1–N submitted by CFE. Copies of the Form 1–N, including all exhibits, are available in the Commission's Public Reference Room, File No. 10–136.

For questions regarding this Release, please contact Ira Brandriss, Special Counsel, at (202) 551–5651, or Nathan Saunders, Special Counsel, at (202) 551–5515; Division of Market Regulation, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–6628.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4553 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following

[1] 15 U.S.C. 78f(g).

[2] 7 U.S.C. 1a(2).

[3] 7 U.S.C. 7a.

[4] 17 CFR 240.6a–4.

[5] Upon receipt of a Form 1–N, the Division of Market Regulation examines the notice to determine whether all necessary information has been supplied and whether all other required documents have been furnished in proper form. Rule 202.3(b)(3) of the Commission's Procedural Rules, 17 CFR 202.3(b)(3).

[6] Exchange Act Section 6(g)(2)(B), 15 U.S.C. 78f(g)(2)(B).

[7] 15 U.S.C. 78f(g)(3).

[8] 17 CFR 200.30–3(a)(77).

meeting during the week of August 22, 2005:

A Closed Meeting will be held on Wednesday, August 24, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the Closed Meeting scheduled for Wednesday, August 24, 2005, will be:

Formal orders of investigations;
Institution and settlement of injunctive actions; and
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 17, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–16642 Filed 8–17–05; 4:57 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52260; File No. SR–Amex–2005–082]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program That Increases Position and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Amex. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks a six month extension of its pilot program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange (''Pilot Program''). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is requesting to extend its current Pilot Program increasing the standard position and exercise limits for options on the QQQQ and equity option classes traded on the Exchange for six months, from August 24, 2005, through and including February 23, 2006.

The Exchange previously filed a proposed rule change, which was effective upon filing with the Commission, that increased standard position and exercise limits for options on the QQQQ and for equity option classes traded on the exchange on a pilot basis for a six month period.[5] Under the Pilot Program, position and exercise limits for options on the QQQQ and equity options classes traded on the Exchange were increased to the following levels:[6]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

The standard position limits were last increased on December 31, 1998.[7] Since that time there has been a steady increase in the number of accounts that: (a) Approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizable positions in the lower three (3) tiers. In addition, overall volume in the options market has continually increased over the past five (5) years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences over the past twenty years justifies the proposed increases in the position and exercise limits.

The Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. The instant proposed rule change makes no substantive change to the Pilot

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program is set to expire on August 23, 2005. *See* Securities Exchange Act Release No. 51316 (March 3, 2005), 70 FR 12251 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–Amex–2005–029).

[6] Except when the Pilot Program is in effect.

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–Amex–98–22) (approval of increase in position limits and exercise limits).

Program other than to extend it for six months through February 23, 2006.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [8] in general and furthers the objective of section 6(b)(5) of the Act [9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2005–082 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 20549–9303.

All submissions should refer to File No. SR–Amex–2005–082. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2005–082 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4551 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52264; File No. SR–BSE–2005–37]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Boston Options Exchange Trading Rules Regarding the Extension of a Pilot Program That Increases the Standard Position and Exercise Limits for Certain Options Traded

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2005, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by BSE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend the rules of the Boston Options Exchange (''BOX''), an options trading facility of the BSE, to extend its current pilot program to increase the standard position and exercise limits for equity option contracts and options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') (''Pilot Program'') for another six months, from September 4, 2005, to March 3, 2006. The text of the proposed rule change is available on the BSE's Web site *(http://www.bostonstock.com)*, at the BSE's principal office, 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 BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the Pilot Program, which includes changes to section 7 (Position Limits) and section 9 (Exercise Limits) of Chapter III of the BOX Rules. Section 7 of Chapter III of the BOX Rules subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Section 9 of Chapter III of the BOX Rules establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits. On March 3, 2005, the Exchange issued notice of the proposed rule change establishing the Pilot Program, which was effective upon filing with the Commission.[5]

Standard Position and Exercise Limits

The Exchange proposes to extend for BOX the Pilot Program for a period of six months during which the standard position and exercise limits for options on the QQQQ and for equity option classes traded on BOX would be increased to the following levels:[6]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

BOX's standard position limits have been in effect since BOX commenced trading in February 2004. These standard position limits are the same as the standard position limits at the other options exchanges at that time, which were last increased on December 31, 1998.[7] Since that time, there has been a steady increase in the number of accounts on the options exchanges that: (a) Approach the position limit; (b) exceed the position limit; and (c) are granted an exemption to the standard limit. Several member firms have petitioned the options exchanges to either eliminate position limits, or in lieu of total elimination, increase the current levels and expand the available hedge exemptions. Currently all of the options exchanges are operating under a similar pilot program which increases the standard position and exercise limits for options on the QQQQ and for equity option classes. A review of available data indicates that the majority of accounts that maintain sizable positions are in those option classes subject to the 60,000 and 75,000 tier limits. There also has been an increase in the number of accounts that maintain sizable positions in the lower three tiers. In addition, overall volume in the options market has consistently increased over the past five years. The Exchange believes that the increase in options volume and lack of evidence of market manipulation occurrences during that same period justifies the proposed increases in the position and exercise limits.

Manipulation

The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. The Commission has previously stated that:

> Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.[8]

The Exchange believes that the existing surveillance procedures and reporting requirements at BOX and other options exchanges and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, the Exchange states that when the Commission reviewed BOX's regulatory program before allowing BOX to begin trading, the Commission did not uncover any material inconsistencies or shortcomings in the manner in which BOX Regulation's market surveillance of BOX would be conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and in underlying stocks.

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[9] Options positions are part of any reportable positions and, thus, cannot be legally hidden. In addition, section 10 of Chapter III of the BOX Rules, which requires members to file reports with the Exchange for any customer or member who held aggregate long or short positions of 200 or more option contracts of any single class for the previous day, will remain unchanged and will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that restrictive equity position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to individual stocks. This can result in lost liquidity in both the options market and the stock market. In addition, the Exchange has found that restrictive limits and narrow

[5] *See* Securities Exchange Act Release No. 51317 (March 3, 2005), 70 FR 12254 (March 11, 2005) (notice and immediate effectiveness of File No. SR–BSE–2005–10).

[6] Except when the Pilot Program is in effect.

[7] *See* Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999) (SR–CBOE–98–25) (approval of increase in position limits and exercise limits).

[8] *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (approval of increase in position limits and exercise limits for OEX index options).

[9] 17 CFR 240.13d–1.

hedge exemption relief restrict member firms from adequately facilitating customer order flow and offsetting the risks of such facilitations in the listed options market. The fact that position limits are calculated on a gross rather than a delta basis also is an impediment.

Financial Requirements

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an equity option. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. Also, the Commission's net capital rule, Rule 15c3–1 under the Act,[10] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, equity position limits have been gradually expanded from 1,000 contracts in 1973 to the current level of 75,000 contracts for options on the largest and most active underlying securities. To date, the Exchange believes that there have been no adverse affects on the market as a result of these past increases in the limits for equity option contracts.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act,[11] in general, and furthers the objective of section 6(b)(5) of the Act,[12] in particular, in that it is designed to promote just and equitable principles of trade 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 burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

[10] 17 CFR 240.15c3–1.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[15] However, Rule 19b–4(f)(6)(iii) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BSE–2005–37 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 20549–9303.

All submissions should refer to File No. SR–BSE–2005–37. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. 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–BSE–2005–37 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4552 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *Id.*

[17] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52262; File No. SR–CBOE–2005–61]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program That Increases the Standard Position and Exercise Limits for Certain Options Traded on the Exchange

August 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 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 and II below, which Items have been prepared by the CBOE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend an existing pilot program that increases the standard position and exercise limits for certain options traded on the Exchange (''Pilot Program''). The text of the proposed rule change is available on the CBOE's Web site (*http://www.cboe.com*), at the CBOE's principal office, 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 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 in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program, as previously approved by the Commission, provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs for a six month period.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ in accordance with the following levels:[6]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

The purpose of the proposed rule change is to extend the Pilot Program for an additional six-month period. The Exchange believes that extending the Pilot Program for six months is warranted due to the positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[7] Also, the Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program for an additional six months.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5) of the Act that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

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.

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 forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day pre-operative delay. The Commission believes that waiving the 30-day pre-operative delay is consistent with the protection of investors and in the public interest because it will allow the Pilot Program to continue uninterrupted.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program, which the Commission approved on February 23, 2005, is set to expire on August 23, 2005. *See* Securities Exchange Act Release No. 51244 (February 23, 2005), 70 FR 10010 (March 1, 2005) (order approving SR–CBOE–2003–30, as amended) (''Pilot Program Order'').

[6] Except when the Pilot Program is in effect.

[7] *See* Pilot Program Order, *supra* note 5.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–CBOE–2005–61 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 20549–9303.

All submissions should refer to File No. SR–CBOE–2005–61. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also 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 No. SR–CBOE–2005–61 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4558 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52265; File No. SR–ISE–2005–39]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Period To Increase Position Limits and Exercise Limits for Equity Options and Options on the Nasdaq-100 Tracking Stock

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the ISE. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to extend the time period for the ISE Rule 412 and ISE Rule 414 position and exercise limits pilot program for equity option contracts and options on the Nasdaq-100 Index Tracking Stock (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the ISE's Web site (*http://www.iseoptions.com*), at the ISE's principal office, 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 ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Pilot Program provides for an increase to the standard position and exercise limits for equity option contracts and for options on QQQQs for a six month period.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ to the following levels:[6]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

The purpose of the proposed rule change is to extend the Pilot Program for an additional six month period. The Exchange believes that extending the Pilot Program for six months is warranted due to the positive feedback from members and for the reasons cited in the original rule filing that proposed the adoption of the Pilot Program.[7] Additionally, the Exchange represents that it has not experienced any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Pilot Program is set to expire on August 23, 2005. *See* Securities Exchange Act Release No. 51295 (March 2, 2005), 70 FR 11292 (March 8, 2005) (notice of filing and immediate effectiveness of File No. SR–ISE–2005–14) (''Pilot Program Notice'').

[6] Except when the Pilot Program is in effect.

[7] *See* Pilot Program Notice, *supra* note 5.

Program for an additional six month period.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act [8] in general, and furthers the objective of section 6(b)(5) of the Act [9] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–39 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 20549–9303.

All submissions should refer to File No. SR–ISE–2005–39. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. 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–ISE–2005–39 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4550 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52259; File No. SR–NYSE–2004–64]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Proposed Changes to Exchange Rule 342 (''Offices—Approval, Supervision and Control'')

August 15, 2005.

Pursuant to section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 2, 2004, the New York Stock Exchange, Inc. (''NYSE'' 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 NYSE. On July 11, 2005, the NYSE filed Amendment No. 1 to the proposed rule change (''Amendment No. 1'').[4] On August 12, 2005, the NYSE filed Amendment No. 2 to the proposed rule change (''Amendment No. 2'').[5] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, which supplemented the original filing, the Exchange added its proposed Interpretive Handbook Interpretations 342.30(d)/01 and 342.30(e)/01 for purposes of clarifying issues related to the designation of a Chief Compliance Officer and the Annual Certification, respectively. The text of interpretations 342.30(d)/01 and 342.30(e)/01 is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[5] In Amendment No. 2, which supplemented the original filing, the Exchange modified interpretation 342.30(e)/01 in order to clarify the obligations of member organizations in the preparation of annual certifications.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed amendment to NYSE Rule 342.30 (''Annual Reports'') would: require each member organization (''Member Organization'') and each member not associated with a member organization (''Member'') to file with the Exchange the annual reports (''Annual Reports'') it is currently required to prepare, and in the case of a Member Organization, to submit to its Chief Executive Officer (''CEO''); add to the Annual Reports a required discussion of compliance efforts regarding anti-money laundering; require each Member Organization to designate a principal officer or general partner as Chief Compliance Officer (''CCO''); and require each Member and the CEO of each Member Organization to file a yearly statement confirming the adequacy of their compliance processes and procedures. The text of the proposed rule change is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, 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 NYSE included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements, as amended, may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Background

NYSE Rule 342 requires supervision of the offices, departments and business activities of Members and Member Organizations. NYSE Rule 342.30, which was adopted on May 27, 1988, requires Members and Member Organizations to prepare an Annual Report addressing specified compliance issues by April 1 of each year. Currently, Member Organizations are required to submit this report only to their CEO or managing partner and Members are required only to prepare the report.

b. Provisions of the Proposed Rule Change

The proposed rule change makes the following changes relating to the Annual Reports:

- The Annual Reports must be filed with the Exchange by April 1 of each year.
- The anti-money laundering compliance programs required by Exchange Rule 445 [6] have been added to the list of specific areas of compliance that must be discussed in the Annual Reports.
- Member Organizations must designate a principal officer or general partner as CCO.[7]
- Each Member, and the CEO (or equivalent) of each Member Organization, must submit a certification attesting to the adequacy of their organization's compliance policies and procedures.[8]

c. Regulatory Purpose of Proposed Rule Change's Provisions

(i) Submission of Annual Reports to the Exchange

Filing the Annual Reports with the Exchange will provide timely information about the compliance efforts of Members and Member Organizations, thereby strengthening and making more efficient the Exchange's regulatory oversight, and facilitating the required annual certifications (see below).

Because submission of the Annual Reports to the Exchange was previously not required, the reports were typically provided to the Exchange at the time of, or in connection with, examinations of Member Organizations and Members.[9] Consequently, the Exchange did not always receive important information in a timely, efficient manner. Providing the reports to Exchange staff at annual intervals will afford the Exchange a timely picture of the Members' and Member Organizations' compliance issues from the preceding year, a tool for planning surveillance and examinations, and more comprehensive information for evaluation of compliance systems and programs and identification of potential regulatory problems.

(ii) Addition of Anti-Money Laundering Discussion to Annual Report

The USA Patriot Act [10] substantially expanded federal anti-money laundering regulations, and led to the enhancement of Exchange anti-money laundering requirements through the adoption of NYSE Rule 445 in April 2002. The Exchange considers anti-money laundering compliance programs to be important enough to warrant consideration and discussion in the Annual Reports, and so the proposed rule change adds these programs to the list of specific areas of compliance that must be discussed in the Annual Reports.

The addition of anti-money laundering compliance programs to the aforementioned list continues the Exchange's practice of incrementally supplementing the list to reflect changes in the evolving regulatory environment. A similar augmentation recently occurred through NYSE Rule 342.23, which added Members' and Member Organizations' internal controls to the Annual Report's list of required compliance discussions.[11]

(iii) Designation of CCO

The Exchange strongly believes that Member Organizations' compliance with Federal laws and Exchange regulations should be of the utmost priority. In furtherance of that belief, the Exchange previously addressed the critically important role of the compliance function by requiring the Series 14 (NYSE Compliance Official) examination and registration, which are intended to ensure the qualifications of key compliance professionals.[12]

In further recognition of the increasing importance of the compliance function, the proposed rule change requires each Member Organization to formally designate a principal executive officer or general

[6] NYSE Rule 445 requires Members and Member Organizations to develop and implement written anti-money laundering programs consistent with the Bank Secrecy Act (31 U.S.C. 5311, *et seq.* and Treasury Regulation 31 CFR 103.120).

[7] The SEC recently approved a similar requirement in NASD's new Rule 3013. Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[8] The SEC recently approved a similar requirement in NASD's new Rule 3013. *See id.*

[9] Some Member Organizations already submit the Annual Reports to the Exchange and/or make them available to Exchange examiners.

[10] Pub. L. 107–56, 115 Stat. 272 (2001).

[11] *See* Securities Exchange Act Release No. 49882 (June 17, 2004), 69 FR 35108 (June 23, 2004) SR–NYSE–2002–36).

[12] The Series 14 Examination is a qualification examination intended to ensure that the individuals designated as having day-to-day compliance responsibilities for their respective firms, or who supervise ten or more people engaged in compliance activities, have the knowledge necessary to carry out their job responsibilities. NYSE Rule 342.13(b) requires Members' and Member Organizations' compliance supervisors to pass the Series 14 Examination. *See* Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988).

partner of the Member Organization as its CCO. This requirement is consistent with NYSE Rule 311(b)(5), which mandates that ''principal executive officers'' exercise responsibility over each of the prescribed business areas of a Member Organization (*e.g.*, compliance). Currently, each principal executive officer and general partner is generally required to pass an examination acceptable to the Exchange that pertains to knowledge of his or her functional responsibility.[13] Based on the type of business that individual conducts, and the structure of his or her organization, acceptable examinations include the Series 9/10 (General Securities Sales Supervisor), Series 14, Series 24 (General Securities Principal), Series 27 (Financial and Operations Principal), or Series 28 (Introducing Broker/Dealer Financial and Operations Principal).[14]

The CCO designation requirement does not apply to Members, because such members, whose activities are limited to interaction with other members on the Floor of the Exchange, generally lack the organizational infrastructure or scope of business activities that would necessitate designation of a CCO.[15]

(iv) CEO Certification

The proposed rule change's CEO certification requirement reflects the Exchange's belief that Member Organizations' senior executives, particularly CEOs, should focus the highest degree of attention and resources on the compliance function. While subordinates with supervisory responsibility for specific business lines remain accountable for the discharge of compliance policies and written supervisory procedures, the Exchange considers CEOs ultimately to be accountable for the compliance and supervision of their Member Organizations.[16] In keeping with those principles, the CEO certification requirement is intended to promote and expand dialogue between Member Organization CEOs and their officers who are responsible for compliance with Federal laws and Exchange regulations.[17]

The required annual certification consists of four elements:

(i) Each Member or each Member Organization's CEO (or equivalent officer) must certify that processes are in place to: establish and maintain policies and procedures designed to achieve compliance with Exchange rules and applicable federal securities laws and regulations; modify such policies and procedures as business, regulatory and legislative changes dictate; and test the effectiveness of such policies and procedures on a periodic basis. This requirement goes to the essential nature of compliance, and assures an appropriately heightened attention to its details.

(ii) Each Member Organization's CEO (or equivalent officer) must certify that he or she has conducted one or more meetings with the CCO during the preceding 12 months, during which they discussed and reviewed the matters described in the certification. Such meetings, which must entail discussion and review of the Member Organization's compliance efforts as of that date, should aid in the identification and resolution of significant ongoing and future compliance problems.

(iii) Each Member Organization's CEO (or equivalent officer) must certify that his or her Member Organization's compliance processes are evidenced in a written report that was reviewed by the Member Organization's CEO, CCO, and such other officers as the Member Organization deems necessary, and submitted to the Member Organization's board of directors and audit committee, if any. The report must be produced prior to the execution of the proposed certification, must describe the manner in which the compliance processes are administered, and must identity the officers and supervisors who are responsible for its administration.[18]

(iv) Each Member Organization's CEO (or equivalent officer) must certify that he or she has consulted with the CCO, such other officers of the Member Organization as the Member Organization deems necessary, and, to the extent the Member Organization's CEO (or equivalent officer), CCO and such other officers deem appropriate in order to attest to the statements in the certification, outside consultants, lawyers and accountants. This requirement recognizes that the CCO's expertise in the matters underlying the certification make his or her role in the process critical, and make the CCO an indispensable party to the CEO's certification.

The sentence ''[I]f any of these areas do not apply to the member or member organization, the report should so state,'' which currently concludes Rule 342.30, has been repositioned in the amended rule text to avoid the ambiguity that otherwise would have resulted from the addition of Rules 342.30(d) and 342.30(e).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with section 6(b)[19] of the Act in general and section 6(b)(5) of the Act[20] which requires that the rules of the Exchange 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 in that it facilitates the Exchange's review of the Membership's regulatory programs, strengthens Member Organizations' oversight of their compliance processes and procedures, and promotes increased involvement of Member Organization CEOs in their firms' compliance matters.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The NYSE has not solicited but has received written comments on the proposed rule change.

[13] *See NYSE Interpretation Handbook,* Rule 304A(a), (c)/01.

[14] In interpretations 342.30(d)/01 and 342.30(e)/01, the Exchange also proposes guidance regarding: the designation of CCOs; the interaction between CCOs and other executives during preparation of Annual Reports; the scope and subjects of the Annual Reports; and the reporting and certification process. The text of interpretations 342.30(d)/01 and 342.30(e)/01 is available on the NYSE's Web site (*http://www.NYSE.com*), at the NYSE's principal office, and at the Commission's Public Reference Room.

[15] This exemption is consistent with other provisions of NYSE Rule 342. For example, under certain circumstances, some compliance officials at Member Organizations are exempt from the Series 14 requirement. *See NYSE Interpretation Handbook,* Rule 342(a)(b)/02.

[16] Attestations similar to the yearly CEO certification requirement proposed herein are also required by Exchange Rule 351(f), which calls for annual confirmation of compliance with Exchange Rule 472 (''Communications with the Public''). *See* Securities Exchange Act Release No. 45908 (May 10, 2002), 67 FR 34968 (May 16, 2002) (SR–NYSE–2002–09).

[17] The proposed rule change's CEO certification requirement corresponds in substance to NASD Rule 3013, which the SEC favorably described as seeking ''to provide a mechanism to compel substantial and purposeful interaction between senior management and compliance personnel to enhance the quality of members' supervisory and compliance systems.'' Securities Exchange Act Release No. 50347 (September 10, 2004), 69 FR 56107 (September 17, 2004) (SR–NASD–2003–176).

[18] *See* interpretation 342.30(e)/01.

[19] 15 U.S.C. 78f(b)

[20] 15 U.S.C. 78f(b)(5)

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 self-regulatory organization consents, the Commission will:

(A) By order approve the 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, 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 e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–64 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 20549–9303.

All submissions should refer to File Number SR–NYSE–2004–64. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–64 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4547 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52243; File No. SR–PCX–2005–91]

Self-Regulatory Organizations; Pacific Exchange, Inc; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to the Continuing Education Regulatory Element Requirement

August 11, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') through its wholly its wholly owned subsidiary PCX Equities, Inc. (''PCX'') 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 Exchange. On August 9, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The PCX has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) 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 PCX proposes to amend PCXE Rule 9.27 to eliminate the ''Grandfather'' exemption to the regulatory element of the Continuing Education (''CE'') Program. Below is the text of the proposed rule change. Proposed new language is in *italics*.

Rules PCX Equities, Inc.

Rule 9

Rule 9.27(a)–(b)—No Change.

Rule 9.27(c)—No ETP Holder shall permit any registered person to continue to, and no registered person shall continue to, perform duties as a registered person, unless such person has complied with the continuing education requirements of this Rule 9.27(c).

Each registered person shall complete the Regulatory Element of the continuing education program *beginning with the occurrence of their second registration anniversary date, and every three years thereafter,* [on three occasions, after the occurrence of their second, fifth and tenth registration anniversary dates,] or as otherwise prescribed by the Corporation. On each [of these three] occasion[s], the Regulatory Element must be completed within one hundred twenty days after the person's registration anniversary date. *A person's initial registration date, also known as the ''base date'', shall establish the cycle anniversary dates for purposes of this Rule.* The content of the Regulatory Element of the program shall be [prescribed] *determined* by the Corporation *for each registration category of persons subject to the Rule.*

(1) *Reserved.* [Registered person who have been continuously registered for more than ten years as of the effective date of this Rule shall be exempt from participation in the Regulatory Element of the continuing education program, provided such persons have not been subject to any disciplinary action within the last ten (10) years as enumerated in subsection (c)(3)(A)–(B) of this Rule. Persons who have been currently registered for ten (10) years or less as of the effective date of this Rule shall initially participate in the Regulatory Element of the continuing education program within one hundred twenty days (120) after the occurrence of the second, fifth or tenth registration anniversary date, whichever anniversary date first applies, and on the applicable registered anniversary date(s) thereafter. Such persons will have satisfied the requirements of the Regulatory Element

[21] 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 minor edits to PCX Rule 9.27(c).

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

of the program after participation on the tenth registration anniversary.

All registered persons who have satisfied the requirements of the Regulatory Element shall be exempt from further participation in the Regulatory Element of the program, subject to re-entry into the program as set forth in subsection (c)(3) of this Rule.]

(2) Failure to Complete—Unless otherwise determined by the Corporation, any registered persons who have not completed the Regulatory Element of the program within the prescribed time frames will have their registration deemed inactive until such time as the requirements of the program have been satisfied. Any person whose registration has been deemed inactive under this Rule shall cease all activities as a registered person and shall be prohibited from performing any duties and functioning in any capacity requiring registration.

The Corporation may, upon application and a showing of good cause, allow for additional time for a registered person to satisfy the program requirements.

(3) *Disciplinary Actions* [Re-entry into Program]—Unless otherwise determined by the SRO, a registered person will be required to [re-enter] *re-take* the Regulatory Element and satisfy all of its requirements in the event such person:

(A) becomes subject to any statutory disqualification as defined in Section (3)(a)(39) of the Securities Exchange Act of 1934;

(B) becomes subject to suspension or to the imposition of a fine of $5,000 or more for violation of any provision of any securities law or regulation, or any agreement with or rule of standard of conduct of any securities governmental agency, securities self-regulatory organization, or as imposed by any such regulatory or self-regulatory organization in connection with a disciplinary proceeding; or

(C) is ordered as a sanction in a disciplinary action to [re-enter] *re-take* the [continuing education program] *Regulatory Element* by any securities governmental agency or securities self-regulatory organization.

[Re-entry] *A re-taking of the Regulatory Element* shall commence with [the initial] participation within 120 days of the registered person becoming subject to the statutory disqualification, in the case of (A) above, or the disciplinary action becoming final, in the case of (B) or (C) above[, and on three additional occasions thereafter, at intervals of two, five and ten years after reentry, notwithstanding that such person has completed all or part of the program requirements based on length of time as a registered person or completion of ten years of participation in the program]. *The date that the disciplinary action becomes final will be deemed the person's new base date for purposes of this Rule.*

Rule 9.27(d)—Commentary .02—No Change.

Rule 9.27 Commentary .03—*Revised.* [A registered person who has been continuously registered for more than ten (10) years as of the date of implementation of this Rule who has been subject to a disciplinary action as enumerated in subsections (c)(3)(A)–(B) of the Rule within the last ten years, will be required to satisfy the requirements of the Regulatory Element of the continuing education program by participation for the period from the date of implementation of this Rule to ten years after the occurrence of the disciplinary action.]

Rule 9.27 Commentary .04—Any registered person who has terminated association with a registered broker or dealer and who has, within two years of the date of termination, become reassociated in a registered capacity with a registered broker or dealer shall participate in the Regulatory Element of the continuing education program *at such intervals that apply (second registration anniversary and every three years thereafter) based on the new base date, rather than based on the date of reassociation in registered capacity.* [on three occasions, after the occurrence of their second, fifth and tenth anniversary date, rather than based on the date of reassociation in a registered capacity]. Any former registered person who becomes reassociated in a registered capacity with a registered broker or dealer more than two years after termination as such will be required to satisfy the program's requirements in their entirety [on three occasions,] based on the most recent registration date.

Rule 9.27 Commentary .05—No Change.

Rule 9.27 Commentary .06—Any registered member who is an ETP Holder who is also a member of another self-regulatory organization (''SRO'') shall be subject to the other SRO's implementation date for the elimination of the exceptions to the Regulatory Element section of the continuing education program, if that date is earlier than September 30, 2005.

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 Exchange 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 PCS has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts 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 PCXE Rule 9.27 to eliminate all exemptions from the Exchange Continuing Education Regulatory Element Program for registered representatives to conform its PCXE Rule 9.27 with applicable rules of other SROs.

Currently, PCXE Rule 9.27 sets for the rules governing the requirements for registered representatives to participate in the Continuing Education Regulatory Element Program (the ''Regulatory Element'').[6] The Regulatory Element is a computer-based education program administered by the National Association of Securities Dealers (''NASD'') to help ensure that registered persons are kept up-to-date on regulatory, compliance and sales practices in the industry. PCXE Rule 9.27 specifies the CE requirements for registered persons subsequent to their initial qualification and registration with the PCXE. Unless exempt, each registered person is required to complete the Regulatory Element within 120 days after the person's second anniversary date and, thereafter within 120 days after every third registration

[6] The continuing Education Program also has a ''Firm Element.'' *See* PCXE Rule 9.27(d). The Exchange Firm Element of the Continuing Education Program applies to any person registered with an NASD member firm who has direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as a research analyst pursuant to NASD Rule 1050, and to the immediate supervisors of such persons (collectively called ''covered registered persons''). The requirement stipulates that each member firm must maintain a continuing and current education program for its covered registered persons to enhance their securities knowledge, skill and professionalism. Each firm has the requirement to annually conduct a training needs analysis, develop a written training plan, and implement the plan.

anniversary date. There are three Regulatory Element programs: the S201 Supervisor Program for registered principals and supervisors, the S106 Series 6 Program for Series 6 representatives, and the S101 General Program for Series 7 and all other registrations.

According to the NASD, approximately 135,000 registered persons are exempt from the Regulatory Element. These include registered persons who, when the CE Program was adopted in 1995, had been registered for at least ten years and who did not have a significant disciplinary action [7] in the CRD record for the previous ten years (so-called ''grandfathered'' persons). These also include those persons who had ''graduated'' from the Regulatory Element by satisfying their tenth anniversary requirement before July 1998, when PCXE Rule 9.27 was amended and the graduation provision eliminated, and who did not have a significant disciplinary action in their CRD record for the previous ten years.[8]

At its December 2003 meeting, the Securities Industry/Regulatory Council on Continuing Education (''Council'') discussed the current exemptions from the Regulatory Element and agreed unanimously to recommend that the SROs repeal the exemptions and require all registered persons to participate in the Regulatory Element. In reaching this conclusion, the Council was of the view that there is great value in exposing all industry participants to the benefits of the Regulatory Element, in part because of the significant regulatory issues that have emerged over the past few years. The Regulatory Element programs include teaching and training content that is continuously updated to address current regulatory concerns as well as new products and trading strategies. Exempt persons presently do not have the benefit of this material.

In addition, the council will introduce a new content module to the Regulatory Element programs that will specifically address ethics and will require participants to recognize ethical issues in given situations. Participants will be required to make decisions in the context of, for example, peer pressure, the temptation to rationalize, or a lack of clear-cut guidelines from existing rules or regulations. The Council strongly believes that all registered persons, regardless of their years of experience in the industry, should have the benefit of this training.

Consistent with the Council's recommendation, the proposed rule change, as amended, would eliminate the current Regulatory Element exemptions. The other SRO members of the Council also support eliminating the exemptions and either have already or are pursuing amendments to their respective rules.

The effective date of the proposed rule change, as amended, will be September 30, 2005.[9] PCXE will announce the effective date of the proposed rule change in the PCXE Weekly Bulletin following the effective date of the proposed rule change.

Moreover, following the effective date of the proposed rule change, implementation will be based on the application of the existing requirements of the Regulatory Element to all registered persons. The way in which the Web Central Registration Depository (''Web CRD''), which is administered by the NASD, applies these requirements is as follows. Web CRD establishes a ''base date'' for each registered person and calculates anniversaries from that date. Usually, the base date is the person's initial securities registration. However, the base date may be revised to be the effective date of a significant disciplinary action in accordance with PCXE Rule 9.27 or the date on which a formerly registered person re-qualifies for association with a PCXE ETP Holder by qualification exam. Using the base date, Web CRD creates a Regulatory Element requirement on the second anniversary of the base date and then every three years thereafter. Registered persons formerly exempt from the Regulatory Element requirement must satisfy this requirement that occurs on an anniversary or after the effective date of the proposed rule change.

It is noted that a person's base date may be revised to be the effective date of a significant disciplinary action in accordance with PCXE Rule 9.27. The Exchange proposes to amend PCXE Rule 9.27 to clarify that a person subject to a significant disciplinary action would be required to ''re-take'' rather than ''re-enter'' the Regulatory Element.[10] A person's base date may also be revised to be the date on which a formerly registered person re-qualifies for association with an ETP Holder.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) [11] of the Act, in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to foster competition, and to protect investors and the public interest. The Exchange believes that the proposed rule change is designed to accomplish these ends by ensuring that all registered persons are kept up-to-date on industry rules, regulations, and practices.

Additionally, under Section 6(c)(3)(B) of the Act,[13] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience, and competence as prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange is rescinding all exemptions from the requirement to complete the Regulatory Element of the Continuing Education Program as prescribed by PCXE Rule 9.27.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Because the foregoing proposed rule change: (1) Does not significantly affect

[7] For purposes of PCXE Rule 9.27(c), a significant disciplinary action generally means a statutory disqualification, a suspension or imposition of a fine of $5,000 or more, or being subject to an order from a securities regulator to re-take the Regulatory Element. *See* PCXE Rule 9.27(c)(3).

[8] When PCXE Rule 9.27 was first adopted in 1995, the Regulatory Element required registered persons to satisfy the Regulatory Element on the second, fifth, and tenth anniversary of their initial securities registration. After satisfying the tenth anniversary requirement, a person was ''graduated'' from the Regulatory Element. A graduated person who was not a principal re-entered if he or she acquired a principal registration or incurred a significant disciplinary action.

[9] To eliminate any confusion, the Exchange has confirmed in the proposed rule change, as amended, that an Exchange participant who is also a member of another SRO must comply with the rules of the other SRO which eliminated these exceptions as of an earlier date. *See* Securities Exchange Act Release Nos. 50404 (September 16, 2004), 69 FR 57126 (September 23, 2004); 50456 (September 27, 2004), 69 FR 59285 (October 4, 2004); 50630 (November 3, 2004), 69 FR 65232 (November 10, 2004); and 50651 (November 10, 2004), 69 FR 67374 (November 17, 2004).

[10] This requirement would apply to all registered persons that are subject of a significant disciplinary action, and not only to currently exempt persons.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(c)(3)(B).

the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed, or such shorter time as the commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15]

At any time within 60 days of the filing of such proposed rule change, as amended, 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.[16]

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–PCX–2005–91 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 20549–9303.

All submissions should refer to File Number SR–PCX–2005–91. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site. (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the PCX. 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–2005–91 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 05–16558 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–M

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19–4(f)(6). Rule 19b–4(f)(6) also requires that the exchange give the Commission written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing the proposed rule change. The Exchange satisfied this requirement.

[16] For purposes of calculating the 60-day abrogation period, the commission considers the proposal to have been filed on August 9, 2005, the date the Exchange filed Amendment No. 1.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52263; File No. SR–PCX–2005–95]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Exchange's Standard Position and Exercise Limit Pilot Program

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 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 and II below, which items have been prepared by the PCX. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to amend its rules to extend the time period in PCX Rule 6.8(a), which covers the position limit and exercise limits pilot program for equity option contracts and options on the Nasdaq-100 Tracking Stock (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's principal office, 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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to extend for six months the Exchange's Pilot Program relating to standard position and exercise limits for equity option contracts and for options on QQQQ for a six-month period.[5] Specifically, the Pilot Program increased the applicable position and exercise limits for equity options and options on the QQQQ in accordance with the following levels: [6]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.

[5] The Pilot Program is set to expire on August 25, 2005. *See* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (notice of filing and immediate effectiveness of File No. SR–PCX–2003–55, as amended) (''Pilot Program Notice'').

[6] Except when the Pilot Program is in effect.

Current equity option contract limit	Pilot Program equity option contract limit
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

The Exchange believes that extending the Pilot Program for six months is warranted due to the positive feedback from OTP Holders and for the reasons cited in the original rule filing that proposed the Pilot Program.[7] Also, the Exchange has not encountered any problems or difficulties relating to the Pilot Program since its inception. For these reasons, the Exchange requests that the Commission extend the Pilot Program for an additional six months.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder and, in particular, the requirements of section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with section 6(b)(5) of the Act[9] that requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–PCX–2005–95 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 20549–9303.

All submissions should refer to File No. SR–PCX–2005–95. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. 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–2005–95 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4548 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

[7] *See* Pilot Program Notice, *supra* note 5.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *Id.*

[14] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52261; File No. SR–Phlx–2005–51]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program Concerning Option Position Limits

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 12, 2005, the Philadelphia Stock

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a six-month period, a pilot program applicable to Exchange Rule 1001, Position Limits, which increases the standard position and exercise limits for equity option contracts and options on the Nasdaq-100 Index Tracking Stock[5] (''QQQQ'') (''Pilot Program''). The text of the proposed rule change is available on the Phlx's Web site (*http://www.phlx.com*), at the Phlx's principal office, 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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot Program, which is scheduled to expire September 2, 2005,[6] for an additional six-month period, through March 3, 2006. Position limits impose a ceiling on the number of option contracts in each class on the same side of the market relating to the same underlying security that can be held or written by an investor or group of investors acting in concert. Exchange Rule 1002 (not proposed to be amended herein) establishes corresponding exercise limits. Exercise limits prohibit an investor or group of investors acting in concert from exercising more than a specified number of puts or calls in a particular class within five consecutive business days.

Exchange Rule 1001 subjects equity options to one of five different position limits depending on the trading volume and outstanding shares of the underlying security. Exchange Rule 1002 establishes exercise limits for the corresponding options at the same levels as the corresponding security's position limits.[7]

Standard Position and Exercise Limit

The Pilot Program increases the standard position and exercise limits for equity options traded on the Exchange and for options overlying QQQQ to the following levels:[8]

Current equity option contract limit	Pilot Program equity option contract limit
13,500 contracts	25,000 contracts.
22,500 contracts	50,000 contracts.
31,500 contracts	75,000 contracts.
60,000 contracts	200,000 contracts.
75,000 contracts	250,000 contracts.
Current QQQQ Option Contract Limit.	**Pilot Program QQQQ Option Contract Limit**
300,000 contracts	900,000 contracts.

To date, the Exchange believes that there have been no adverse effects on the market as a result of these increases in the limits for equity option contracts and options overlying QQQQ.

2. Statutory Basis

The Exchange believes that its proposal is consistent with section 6(b) of the Act[9] in general, and furthers the objective of section 6(b)(5) of the Act[10] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade, by extending the pilot for an additional six months.

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

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date

[3] 15 U.S.C. 78s(b)(3)(A).

[4] CFR 240.19b–4(f)(6).

[5] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement (''License'') with Nasdaq. The Nasdaq-100 Index® (''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[6] *See* Securities Exchange Act Release No. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (notice of filing and immediate effectiveness of File No. SR–Phlx–2005–17).

[7] Exchange Rule 1002 states, in relevant part, ''* * * no member or member organization shall exercise, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, a long position in any option contract of a class of options dealt in on the Exchange (or, respecting an option not dealt in on the Exchange, another exchange if the member or member organization is not a member of that exchange) if as a result thereof such member or member organization, or partner, officer, director or employee thereof or customer, acting alone or in concert with others, directly or indirectly, has or will have exercised within any five (5) consecutive business days aggregate long positions in that class (put or call) as set forth as the position limit in Rule 1001, in the case of options on a stock or on an Exchange-Traded Fund Share * * *.''

[8] Except when the Pilot Program is in effect.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

of filing.[13] However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2005–51 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 20549–9303.

All submissions should refer to File No. SR–Phlx–2005–51. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2005–51 and should be submitted on or before September 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4549 Filed 8–19–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] *Id.*

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5161]

Culturally Significant Objects Imported for Exhibition Determinations: ''Hesse: A Princely German Collection''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Hesse: A Princely German Collection'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Portland Art Museum, from on or about October 29, 2005, until on or about March 19, 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 Richard Lahne, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8058). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 11, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–16603 Filed 8–19–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

[Public Notice 5160]

List of August 15, 2005, of Participating Countries and Entities (Hereinafter Known as ''Participants'') Under the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: In accordance with Sections 3 and 6 of the Clean Diamond Trade Act of 2003 (Pub. L. 108–19) and Section 2 of Executive Order 13312 of July 29, 2003, the Department of State is identifying all the Participants eligible for trade in rough diamonds under the Act, and their respective Importing and Exporting Authorities, and revising the previously published list of July 29, 2004 (69 FR 47977–47978, August 6, 2004).

FOR FURTHER INFORMATION CONTACT: Sue Saarnio, Special Advisor for Conflict Diamonds, Bureau of Economic and Business Affairs, Department of State, (202) 647–1713.

SUPPLEMENTARY INFORMATION: Section 4 of the Clean Diamond Trade Act (the ''Act'') requires the President to prohibit the importation into, or the exportation from, the United States of any rough diamond, from whatever source, that has not been controlled through the Kimberley Process Certification Scheme

(KPCS). Under Section 3(2) of the Act, ''controlled through the Kimberley Process Certification Scheme'' means an importation from the territory of a Participant or exportation to the territory of a Participant of rough diamonds that is either (i) carried out in accordance with the KPCS, as set forth in regulations promulgated by the President, or (ii) controlled under a system determined by the President to meet substantially the standards, practices, and procedures of the KPCS. The referenced regulations are contained at 31 CFR Part 592 (''Rough Diamonds Control Regulations'') (69 FR 56936, September 23, 2004).

Section 6(b) of the Act requires the President to publish in the **Federal Register** a list of all Participants, and all Importing and Exporting Authorities of Participants, and to update the list as necessary. Section 2 of Executive Order 13312 of July 29, 2003 delegates this function to the Secretary of State. Section 3(7) of the Act defines ''Participant'' as a state, customs territory, or regional economic integration organization identified by the Secretary of State. Section 3(3) of the Act defines ''Exporting Authority'' as one or more entities designated by a Participant from whose territory a shipment of rough diamonds is being exported as having the authority to validate a Kimberley Process Certificate. Section 3(4) of the Act defines ''Importing Authority'' as one or more entities designated by a Participant into whose territory a shipment of rough diamonds is imported as having the authority to enforce the laws and regulations of the Participant regarding imports, including the verification of the Kimberley Process Certificate accompanying the shipment.

List of Participants

Pursuant to Section 3 of the Clean Diamond Trade Act (the Act), Section 2 of Executive Order 13312 of July 29, 2003, and Delegation of Authority No. 245 (April 23, 2001), I hereby identify the following entities as of August 15, 2005, as Participants under section 6(b) of the Act. Included in this List are the Importing and Exporting Authorities for Participants, as required by Section 6(b) of the Act. This list revises the previously published list of July 29, 2004 (69 FR 47977–47978, August 6, 2004).

Angola—Ministry of Geology and Mines.
Armenia—Ministry of Trade and Economic Development.
Australia—Exporting Authority—Department of Industry, Tourism and Resources; Importing Authority—Australian Customs Service.
Belarus—Department of Finance.
Botswana—Ministry of Minerals, Energy and Water Resources.
Brazil—Ministry of Mines and Energy.
Bulgaria—Ministry of Finance.
Canada—Natural Resources Canada.
Central African Republic—Ministry of Energy and Mining.
China—General Administration of Quality Supervision, Inspection and Quarantine.
Democratic Republic of the Congo—Ministry of Mines and Hydrocarbons.
Croatia—Ministry of Economy.
European Community—DG/External Relations/A.2.
Ghana—Precious Minerals and Marketing Company Ltd.
Guinea—Ministry of Mines and Geology.
Guyana—Geology and Mines Commission.
India—The Gem and Jewellery Export Promotion Council.
Indonesia—Directorate General of Foreign Trade of the Ministry of Trade.
Israel—The Diamond Controller.
Ivory Coast—Ministry of Mines and Energy.
Japan—Ministry of Economy, Trade and Industry.
Republic of Korea—Ministry of Commerce, Industry and Energy.
Laos—Ministry of Finance.
Lesotho—Commissioner of Mines and Geology.
Malaysia—Ministry of International Trade and Industry.
Mauritius—Ministry of Commerce.
Namibia—Ministry of Mines and Energy.
Norway—The Norwegian Goldsmiths' Association.
Romania—National Authority for Consumer Protection.
Russia—Gokhran, Ministry of Finance.
Sierra Leone—Government Gold and Diamond Office.
Singapore—Singapore Customs.
South Africa—South African Diamond Board.
Sri Lanka—National Gem and Jewellery Authority.
Switzerland—State Secretariat for Economic Affairs.
Taiwan—Bureau of Foreign Trade.
Tanzania—Commissioner for Minerals.
Thailand—Ministry of Commerce.
Togo—Ministry of Mines and Geology.
Ukraine—State Gemological Centre of Ukraine.
United Arab Emirates—Dubai Metals and Commodities Center.
United States of America—Importing Authority—United States Bureau of Customs and Border Protection; Exporting Authority—Bureau of the Census.
Venezuela—Ministry of Energy and Mines.
Vietnam—Ministry of Trade.
Zimbabwe—Ministry of Mines and Mining Development.

This notice shall be published in the **Federal Register**.

Robert B. Zoelick,

Deputy Secretary of State, Department of State.

[FR Doc. 05–16602 Filed 8–19–05; 8:45 am]

BILLING CODE 4710–07–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2005–22114]

RIN 2105–AD53

Time Zone Boundaries in the State of Indiana

AGENCY: Office of the Secretary, DOT.

ACTION: Correction notice.

SUMMARY: This notice corrects the docket number identified in the August 17, 2005 publication of a notice to initiate proceedings to hold hearings in the appropriate locations in Indiana on the issue of the location of the boundary between the Eastern and Central Time Zones in Indiana.

DATE: *Effective Date:* August 22, 2005.

ADDRESSES: You may submit petitions [identified by the docket number in the heading at the beginning of this document] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting petitions on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the General Counsel (C–50), 400 Seventh Street, SW., Washington, DC 20590; e-mail *indianatime@dot.gov*.; (202) 366–9306.

SUPPLEMENTARY INFORMATION: The notice published on August 17, 2005 (70 FR

48460) incorrectly identified the docket number for submitting petitions as 22119. The correct docket number for submitting petitions is 22114. Any petitions submitted to the incorrect docket number will appear under the correct docket number. This correction notice is to rectify that typographical mistake.

Issued in Washington, DC, this 18th day of August, 2005,

Robert Ashby,

Deputy Assistant General Counsel.

[FR Doc. 05–16703 Filed 8–18–05; 1:27 pm]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–47]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of prior petition.

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 the disposition of certain petitions previously received. 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.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, 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 August 15, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Disposition of Petitions

Docket No.: FAA–2005–21696.
Petitioner: Custom Air Transport.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(iii).
Description of Relief Sought/ Disposition: To permit Custom Air Transport to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command while that PIC is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.434.
Grant, 07/08/2005, Exemption No. 8580.

Docket No.: FAA–2002–10072.
Petitioner: Bay Air Charter.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Bay Air Charter to operate aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in those aircraft.
Grant, 07/11/2005, Exemption No. 7592B.

Docket No.: FAA–2005–21742.
Petitioner: Business Aviation Services.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Business Aviation Services to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/11/2005, Exemption No. 8581.

Docket No.: FAA–2005–21743.
Petitioner: Gilbert Aviation.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Gilbert Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/11/2005, Exemption No. 8583.

Docket No.: FAA–2003–21728.
Petitioner: Action Air Express.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Action Air Express to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 07/11/2005, Exemption No. 8582.

Docket No.: FAA–2005–21652.
Petitioner: Jim Air, Inc.
Sections of 14 CFR Affected: 14 CFR 135.152.
Description of Relief Sought/ Disposition: To permit Jim Air, Inc. to operate one Construcciones Aeronautics Casa 212–200 model airplane under part 135 without being equipped with an approved digital flight data recorder as required by § 135.152.
Grant, 07/13/2005, Exemption No. 8584.

Docket No.: FAA–2005–21734.
Petitioner: Shuttle America Corporation.
Sections of 14 CFR Affected: 14 CFR 121.434(c).
Description of Relief Sought/ Disposition: To permit Shuttle America Corporation and its pilots to count certain part 121 operation experience acquired or accomplished for pilots on the EMB–170 while those pilots were employed by Chatauqua Airlines, Inc., as if that operating experience were accomplished at Shuttle America Corporation.
Grant, 07/15/2005, Exemption No. 8586.

Docket No.: FAA–2002–13163.
Petitioner: Ryan International Airlines, Inc.
Sections of 14 CFR Affected: 14 CFR 121.434(c)(1)(iii).
Description of Relief Sought/ Disposition: To permit Ryan International Airlines, Inc. to substitute a qualified and authorized check airman or aircrew program designee for an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.
Grant, 07/15/2005, Exemption No. 8085A.

Docket No.: FAA–2005–21741.
Petitioner: Mavrik Aire.
Sections of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Mavrik Aire to operate certain aircraft under part 135 without a TSO-C112 (Mode S) transponder installed in the aircraft.
Grant, 07/20/2005, Exemption No. 8588.

Docket No.: FAA–2001–10918.
Petitioner: Goodyear Aviation Tires.
Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit representatives of the Federal Aviation Administrator to issue export airworthiness approvals for Class II and Class III products at the Goodyear tire facility in Thailand.
Grant, 07/21/2005, Exemption No. 6682G.

Docket No.: FAA–2001–10356.
Petitioner: United States Army Special Operations Command.
Sections of 14 CFR Affected: 14 CFR 91.177(a)(2) and 91.179(b)(1).
Description of Relief Sought/ Disposition: To permit United States Army Special Operations Commanding

aircraft to conduct low-level operations without complying with enroute minimum altitudes for flight under instrument flight rules or direction of flight requirements for IFR enroute segment in uncontrolled airspace.

Grant, 07/26/2005, Exemption No. 7631C.

Docket No.: FAA–2000–8528.

Petitioner: Popular Rotorcraft Association.

Sections of 14 CFR Affected: 14 CFR 913.319(a).

Description of Relief Sought/ Disposition: To permit Popular Rotorcraft Association and it's member flight instructors to conduct pilot and flight instructor training in experimental gyroplanes for compensation or hire.

Grant, 07/27/2005, Exemption No. 5209J.

Docket No.: FAA–2002–11992.

Petitioner: Kent State University.

Sections of 14 CFR Affected: 14 CFR 135.251, 135.255 and 135.353, and appendices (I) and (J).

Description of Relief Sought/ Disposition: To permit Kent State University to conduct local sightseeing flights at the Kent State University Airport, Stow, Ohio, on September 17, and 18, 2005, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 07/29/2005, Exemption No. 8592.

Docket No.: FAA–2004–16901.

Petitioner: Boeing Commercial Airplanes.

Sections of 14 CFR Affected: 14 CFR 21.195(d)(2).

Description of Relief Sought/ Disposition: To permit Boeing Commercial Airplanes to obtain Special Airworthiness Certificates in the experimental category for certain aircraft with less than the minimum number of flight hours required by the regulation for the purpose of Market Survey.

Grant, 07/28/2005, Exemption No. 8591.

Docket No.: FAA–2004–18617.

Petitioner: Honeywell International, Inc.

Sections of 14 CFR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To permit Honeywell's Organizational Designated Airworthiness Representatives to issue export airworthiness approvals for Class II and Class III products manufactured at the Honeywell facility in Brazil.

Grant, 07/21/2005, Exemption No. 8504B.

Docket No.: FAA–2003–15677.

Petitioner: Mr. Zdravko Podolski.

Sections of 14 CFR Affected: 14 CFR 91.109(a).

Description of Relief Sought/ Disposition: To permit Mr. Podolski to conduct certain flight instruction on Beechcraft Bonanza/Debonair aircraft equipped with a functioning throw-over control wheel instead of functioning dual controls.

Grant, 0729005, Exemption No. 8101A.

[FR Doc. 05–16523 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–51]

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 August 29, 2005.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FAA–2005–22116) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, 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 August 15, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–22166.

Petitioner: General Atomics Aeronautical Systems.

Section of 14 CFR Affected: 14 CFR 91.9 and 91.203.

Description of Relief Sought: Petitioner seeks an exemption permitting operation of certain Unmanned Aerial Vehicle aircraft without carrying airworthiness, certification, and registration documents aboard.

[FR Doc. 05–16630 Filed 8–17–05; 3:25 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 204 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 204: 406 MHz Emergency Locator Transmitters.

DATES: The meeting will be held on September 7–8, 2005 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- September 7–8:
- Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA procedures, Review Agenda, Review Terms of Reference).
- Discussion—DO–183 Activities
- Committee Presentation, Discussion, Recommendations.
- Organization of Work, Assign Tasks and Workgroups.
- Presentation, Discussion, Recommendations.
- Assignment of Responsibilities.
- Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 11, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–16521 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 207/Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 207, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 207, Airport Security Access Control Systems.

DATES: The meeting will be held September 8, 2005, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc.,—MacIntosh-NBAA & Hilton-ATA Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 207 meeting. The agenda will include:

- September 8:
- Opening Plenary Session (Welcome, Introductions, and Administrative Remarks).
- Review of previous meeting summary.
- Presentations by TSA.
- Update on preparation for vendor presentations.
- Discussions postponed from previous meeting.
- Scope of access control systems for document.
- FIPS compliancy issue.
- Standards versus recommendations issue.
- Closing Plenary Session (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 11, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–16522 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Wednesday, September 7, 2005 from 3 p.m. ET to 4 p.m. ET via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 16, 2005.

Maryclare Whitehead,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–16624 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–253578–96]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–253578–96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group

Health Plans (§§ 54.9801–3T, 54.9801–4T, 54.9801–5T, and 54.9801–6T).

DATES: Written comments should be received on or before October 21, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P, Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

OMB Number: 1545–1537.

Regulation Project Number: REG–253578–96 (Final).

Abstract: These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 2,600,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 262,289.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 05–16609 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Closed Meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATES: The meeting will be held September 20 and 21, 2005.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 20 and 21, 2005, in Room 6001E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435–5609 (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on September 20 and 21, 2005, in Room 6001E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax 2 returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

David B. Robison,

Chief, Appeals.

[FR Doc. E5–4560 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 15, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Thursday, September 15, 2005 from 2 pm to 3 pm ET via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, send written comments to Audrey Y. Jenkins, TAP Office, 10

MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: August 16, 2005.

Maryclare Whitehead,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–16623 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will be serving as members on IRS' FY2005 SES Performance Review Board(s).

DATES: This notice is effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT: Lynn Perry, 1111 Constitution Avenue, NW., OS:HC:S, Room 3511, Washington D.C. 20224, (202) 622–5076.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Internal Revenue Service's Senior Executive Service Performance Review Board. The names and titles of the executives serving on this board follow:

John M. Dalrymple, Deputy Commissioner for Operations Support, and Chairperson, Service-wide Performance Review Board

Mark Matthews, Deputy Commissioner for Services and Enforcement

Evelyn A. Petschek, Chief of Staff

Beverly O. Babers, Chief Human Capital Officer

Gary D. Bell, Director, CI Technical Operations & Investigative Services (CI)

Brady R. Bennett, Director, Collection (SBSE)

Carol A. Barnett, Director, Human Resources (W&I)

John E. Binnion, Associate CIO for Management & Finance (MITS)

Kevin M. Brown, Commissioner, Small Business & Self-Employed

Steven Burgess, Director, Examination (W&I)

Vicki S. Duane, Director, Refund Crimes (CI)

Carl T. Froehlich, Chief, Agency-wide Shared Services

Daniel Galik, Chief, Mission Assurance

Linda Gilpin, Associate CIO, Enterprise Services (MITS)

Arthur L. Gonzalez, Deputy Chief Information Officer

W. Todd Grams, Chief Information Officer

James M. Grimes, Director, Reporting Compliance (W&I)

Robert L. Hunt, Director, Compliance Services (SBSE)

Nancy J. Jardini, Chief, Criminal Investigation

Frank Keith, Chief, Communications and Liaison

Janice Lambert, Chief Financial Officer

Terrence H. Lutes, Associate CIO for Information Technology Services (MITS)

Mark J. Mazur, Director, Research, Analysis & Statistics

David L. Medeck, Director, Customer Accounts Services (W&I)

Steven T. Miller, Commissioner, Tax Exempt and Government Entities

Richard J. Morgante, Commissioner, Wage & Investment

Deborah M. Nolan, Commissioner, Large and Mid-Size Business

Nina E. Olson, National Taxpayer Advocate

James O'Malley, Director, Management & Finance (LMSB)

Mark E. Pursley, Customer Assistance, Relations & Education (W&I)

John M. Robinson, Chief, EEO and Diversity

David B. Robison, Chief, Appeals

Richard Spires, Associate CIO for Modernization Management (MITS)

Linda E. Stiff, Deputy Commissioner, Small Business & Self-Employed

Bruce Unger, Deputy Commissioner, Large & Mid-size Business

Pamela Watson, Deputy Commissioner, Wage & Investment

This document does not meet the Department of Treasury's criteria for significant regulations.

Dated: August 16, 2005.

John M. Dalrymple,

Deputy Commissioner for Operations Support Internal Revenue Service.

[FR Doc. E5–4559 Filed 8–19–05; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
August 22, 2005

Part II

Environmental Protection Agency

40 CFR Part 197
Public Health and Environmental Radiation Protection Standards for Yucca Mountain, Nevada; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[OAR–2005–0083; FRL–7952–1]

RIN 2060–AN15

Public Health and Environmental Radiation Protection Standards for Yucca Mountain, NV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the Environmental Protection Agency (EPA), are proposing to revise certain of our public health and safety standards for radioactive material stored or disposed of in the potential repository at Yucca Mountain, Nevada. Section 801(a) of the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486) directed us to develop these standards. These standards (the 2001 standards) were originally promulgated on June 13, 2001 (66 FR 32074). Section 801 of the EnPA also required us to contract with the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. The health and safety standards promulgated by EPA are to be ''based upon and consistent with'' the findings and recommendations of NAS. On August 1, 1995, NAS released its report (the NAS Report), titled ''Technical Bases for Yucca Mountain Standards.'' In promulgating our standards, we considered the NAS Report as the EnPA directs.

On July 9, 2004, in response to a legal challenge by the State of Nevada and the Natural Resources Defense Council, the U.S. Court of Appeals for the District of Columbia Circuit vacated portions of our standards that addressed the period of time for which compliance must be demonstrated. The Court ruled that the time frame for regulatory compliance was not ''based upon and consistent with'' the findings and recommendations of the NAS and remanded those portions of the standards to us for revision. These remanded provisions are the subject of today's action.

Today's proposal incorporates multiple compliance criteria applicable at different times for protection of individuals and in circumstances involving human intrusion into the repository. Compliance will be judged against a standard of 150 microsievert per year (15 millirem per year) committed effective dose equivalent at times up to 10,000 years after disposal and against a standard of 3.5 millisievert per year (350 millirem per year) committed effective dose equivalent at times after 10,000 years and up to 1 million years after disposal. Today's proposal also includes several supporting provisions affecting DOE's performance projections. DOE will measure the median of the distribution of doses against the dose standard beyond 10,000 years, will calculate doses using updated scientific factors, and will incorporate specific direction on analyzing features, events, and processes that may affect performance.

Section 801(b) of the EnPA requires the Nuclear Regulatory Commission (NRC) to modify its technical requirements for licensing of the Yucca Mountain repository to be consistent with the standards promulgated by EPA. NRC did incorporate EPA's Yucca Mountain standards into its licensing regulations and the regulatory time frame provision of these was similarly struck down by the Court of Appeals. Once revised regulatory time frame components of our standards have been promulgated, NRC must revise its licensing regulations to be consistent with our revised standards. The Department of Energy (DOE) plans to submit a license application providing a compliance demonstration. The NRC will determine whether DOE has demonstrated compliance with NRC's licensing regulations, which must be consistent with our standards, prior to granting or denying the necessary licenses to dispose of radioactive material in Yucca Mountain.

DATES: Comments must be received on or before October 21, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2005–0083, by one of the following methods:

1. *Electronically.* If you submit an electronic comment as prescribed below, 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 we cannot read your comment due to technical difficulties or we need further information on the substance of your comment. EPA's policy is that we 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, we may not be able to consider your comment.

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

ii *Agency Web site:* EPA's preferred method for receiving comments is via its website, EDOCKET. EDOCKET 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. Go directly to EDOCKET at *http://www.epa.gov/edocket*, or, from the EPA Internet Home Page (*www.epa.gov*), select ''Information Sources'' (in the left column), then ''Dockets,'' then ''EPA Dockets'' (in the first paragraph). For either route, then click on ''Quick Search'' (in the left column). In the search window, type in the docket identification number OAR–2005–0083. Please be patient, the search could take about 30 seconds. This will bring you to the ''Docket Search Results'' page. At that point, click on OAR–2005–0083. From the resulting page, you may submit a comment by clicking on the balloon icon in the ''Submit Comment'' column and following the subsequent directions.

iii. *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2005–0083. 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.

2. *Surface Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2005–0083.

3. *Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2005–0083. Such deliveries are only

accepted during the Docket Center's normal hours of operation.

4. *Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2005–0083.

Instructions for submitting information to EDOCKET: Direct your comments and information to Docket ID No. OAR–2005–0083. 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.

Certain types of information will not be placed in EDOCKET. 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. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or *regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Docket: The official docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. The telephone number for the Air and Radiation Docket is 202–566–1742. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged.

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 since it will not be placed in EDOCKET. That is, although a part of the official docket, EDOCKET does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. 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 EDOCKET. In addition, EPA policy is that copyrighted material will not be placed in EPA's EDOCKET, 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 EDOCKET. When a document is selected from the index list in EDOCKET, the system will identify whether the document is available for viewing. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, Radiation Protection Division (6608J), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 202–343–9601; fax number: 202–343–2305; e-mail address: *clark.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

The DOE is the only entity regulated by these standards. Our standards affect NRC only because, under Section 801(b) of the EnPA, 42 U.S.C. 10141 n., NRC must modify its licensing requirements, as necessary, to make them consistent with our final standards. Before it may accept waste at the Yucca Mountain site, DOE must obtain a license from NRC. DOE will be subject to NRC's modified regulations, which NRC will implement through its licensing proceedings.

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

1. *Submitting CBI.* If you submit CBI, clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. Respond to specific questions from the Agency.

9. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response.

C. How Can I View Items in the Docket?

1. *Information Files.* EPA is working with the Lied Library at the University of Nevada-Las Vegas (*http://www.library.unlv.edu/about/hours.html#desks*) and the Amargosa Valley, Nevada public library (*http://www.amargosavalley.com/Library.html*) to provide information files on this rulemaking. These files are not legal dockets, however every effort will be made to put the same material in them as in the official public docket in Washington, DC. The Lied Library information file is at the Research and Information Desk, Government Publications Section (702–895–2200). Hours vary based upon the academic calendar, so we suggest that you call ahead to be certain that the library will be open at the time you wish to visit (for a recorded message, call 702–895–2255). The other information file is in the Public Library in Amargosa Valley, Nevada (phone 775–372–5340). As of the date of publication, the hours are Monday, Wednesday, and Friday (9 a.m.–5 p.m.); Tuesday and Thursday (9 a.m.–7 p.m.); and Saturday (9 a.m.–1 p.m.). The library is closed on Sunday. These hours can change, so we suggest that you call ahead to be certain when the library will be open.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets (EDOCKET). You may use EDOCKET to submit or view 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. To access the docket either go directly to *http://www.epa.gov/edocket/* or, from the EPA Internet Home Page (*www.epa.gov*), select ''Information Sources'' (in the left column), then ''Dockets,'' then ''EPA Dockets'' (in the first paragraph). For either route, then click on ''Quick Search'' (in the left column). In the search window, type in the docket identification number OAR–2005–0083. Please be patient, the search could take about 30 seconds. This will bring you to the ''Docket Search Results'' page. At that point, click on OAR–2005–0083. From the resulting page, you may access the docket contents (*e.g.*, OAR–2005–0083–0002) by clicking on the icon in the ''Rendition'' column.

D. Can I Access Information by Telephone or Via the Internet?

Yes. You may call our toll-free information line (800–331–9477) 24 hours per day. By calling this number, you may listen to a brief update describing our rulemaking activities for Yucca Mountain, leave a message requesting that we add your name and address to the Yucca Mountain mailing list, or request that an EPA staff person return your call. In addition, we have established an electronic listserv through which you can receive electronic updates of activities related to this rulemaking. To subscribe to the listserv, go to *https://lists.epa.gov/read/all_forums.* In the alphabetical list, locate ''yucca-updates'' and select ''subscribe'' at the far right of the screen. You will be asked to provide your e-mail address and choose a password. You also can find information and documents relevant to this rulemaking on the World Wide Web at *http://www.epa.gov/radiation/yucca.* We also recommend that you examine the preamble and regulatory language for the earlier proposed and final rules, which appeared in the **Federal Register** on August 27, 1999 (64 FR 46976) and June 13, 2001 (66 FR 32074), respectively.

E. What Documents Are Referenced in Today's Proposal?

We refer to a number of documents that provide supporting information for our Yucca Mountain standards. All documents relied upon by EPA in regulatory decisionmaking may be found in our docket (OAR–2005–0083). Other documents, *e.g.*, statutes, regulations, proposed rules, are readily available from public sources. The documents below are referenced most frequently in today's proposal.

Item No. (OAR–2005–0083–xxxx)

0044 ''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' International Atomic Energy Agency
TECDOC–767, 1994

0045 ''Regulatory Decision Making in the Presence of Uncertainty in the Context of Disposal of Long Lived Radioactive Wastes,'' International Atomic Energy Agency
TECDOC–975, 1997

0046 ''The Handling of Timescales in Assessing Post-Closure Safety: Lessons Learnt from the April 2002 Workshop in Paris, France,'' Nuclear Energy Agency (Organisation for Economic Co-operation and Development), 2004

0051 ''Geological Disposal of Radioactive Waste,'' International Atomic Energy Agency Draft Safety Requirements (DS154), April 2005

0061 ''Principles and Standards for Disposal of Long-Lived Radioactive Wastes,'' Neil Chapman and Charles McCombie, Elsevier Press, 2003

0062 ''An International Peer Review of the Yucca Mountain Project TSPA–SR,'' Joint Report by the OECD Nuclear Energy Agency and the International Atomic Energy Agency, OECD, 2002

0076 Technical Bases for Yucca Mountain Standards (the NAS Report), National Research Council, National Academy Press, 1995

0077 ''Assessment of Variations in Radiation Exposure in the United States,'' EPA Technical Support Document, July 2005

0085 ''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' EPA Technical Support Document, July 2005

0086 DOE Final Environmental Impact Statement, DOE/EIS–0250, February 2002

Acronyms and Abbreviations

We use many acronyms and abbreviations in this document. These include:

BID—background information document
CED—committed effective dose
CEDE—committed effective dose equivalent
DOE—U.S. Department of Energy
DOE/VA—DOE's Viability Assessment
EIS—Environmental Impact Statement
EnPA—Energy Policy Act of 1992
EPA—U.S. Environmental Protection Agency
FEIS—Final Environmental Impact Statement
FEPs—features, events, and processes
FR—**Federal Register**
GCD—greater confinement disposal
HLW—high-level radioactive waste
HSK—Swiss Federal Nuclear Safety Inspectorate
IAEA—International Atomic Energy Agency

ICRP—International Commission on Radiological Protection
KASAM—Swedish National Council for Nuclear Waste
LLW—low-level radioactive waste
MCL—maximum contaminant level
MTHM—metric tons of heavy metal
NAPA—National Academy of Public Administration
NAS—National Academy of Sciences
NEA—Nuclear Energy Agency
NEI—Nuclear Energy Institute
NRC—U.S. Nuclear Regulatory Commission
NRDC—Natural Resources Defense Council
NTS—Nevada Test Site
NTTAA—National Technology Transfer and Advancement Act
NWPA—Nuclear Waste Policy Act of 1982
NWPAA—Nuclear Waste Policy Amendments Act of 1987
OECD—Organization for Economic Cooperation and Development
OMB—Office of Management and Budget
RMEI—reasonably maximally exposed individual
SSI—Swedish Radiation Protection Authority
SNF—spent nuclear fuel
SR—Site recommendation
TRU—transuranic
TSPA—Total System Performance Assessment
UK—United Kingdom
UMRA—Unfunded Mandates Reform Act of 1995
U.S.C.—United States Code
WIPP LWA—Waste Isolation Pilot Plant Land Withdrawal Act of 1992

Outline of Today's Action

I. What is the History of Today's Action?
A. Promulgation of 40 CFR part 197 in 2001
1. What are the Elements of EPA's 2001 Standards?
a. What is the Standard for Storage of the Waste? (Subpart A, §§ 197.1 through 197.5)
b. What Are the Standards for Disposal? (Subpart B, §§ 197.11 through 197.36)
i. What is the Standard for Protection of Individuals? (§§ 197.20 through 197.21)
aa. Who Represents the Exposed Population?
bb. How Far Into the Future Must Performance be Assessed?
ii. What is the Standard for Human Intrusion? (§§ 197.25 through 197.26)
iii. What are the Standards to Protect Ground Water? (§§ 197.30 through 197.31)
c. What is ''Reasonable Expectation''? (§ 197.14)
B. Legal Challenges to 40 CFR part 197
1. Challenges by the State of Nevada and Natural Resources Defense Council
2. Challenge by the Nuclear Energy Institute
C. Ruling by the U.S. Court of Appeals for the District of Columbia Circuit
1. What Did the Court of Appeals Rule on the Issue of Compliance Period?
a. What Were NAS's Findings (''Conclusions'') and Recommendations on the Issue of Compliance Period?
2. What Did the Court of Appeals Rule on Other Issues Related to EPA's Standards?
II. How Will EPA Address the Decision by the Court of Appeals?
A. How Will Elements of the Disposal Standards be Affected?
1. Individual-Protection Standard
2. Human-Intrusion Standard
3. Ground-Water Protection Standards
4. Reasonable Expectation
5. Effects of Uncertainty
B. How Does the Application of ''Reasonable Expectation'' Influence Today's Proposal?
C. How Is EPA Proposing to Revise the Individual-Protection Standard (§ 197.20) to Address Peak Dose?
1. Multiple Dose Standards Applicable to Different Compliance Periods
2. What Other Options Did EPA Consider?
a. Maintain the 10,000-year Standard Alone Without Addressing Peak Dose
b. Dose Standard To Apply at Peak Dose Alone
c. Peak Dose Standard Varying Over Time
d. Standard Expressed as a Dose Target, Rather Than Limit
e. Standard Expressed as a Statistical Distribution
3. What Dose Level is EPA Proposing for Peak Dose?
4. What Other Peak Dose Levels Did EPA Consider?
a. Maintain the 15 mrem/yr Standard at Peak Dose
b. 100 mrem/yr Standard at Peak Dose
c. Peak Dose Standard Based on Regional Background Radiation Levels
5. How Will NRC Judge Compliance?
6. How Will DOE Calculate the Dose?
D. How Will Today's Proposal Affect the Way DOE Conducts Performance Assessments?
1. Performance Assessments Up To 10,000 Years After Disposal
2. Performance Assessments for Periods Longer Than 10,000 Years After Disposal
a. Consideration of Likely, Unlikely, and Very Unlikely FEPs
b. Consideration of Seismic FEPs
c. Consideration of Igneous (Volcanic) FEPs
d. Consideration of Climatological FEPs
E. How Is EPA Proposing To Revise the Human-Intrusion Standard (§ 197.25) To Address Peak Dose?
F. Summary of Today's Proposal by Section
III. 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 & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. What Is the History of Today's Action?

Radioactive wastes result from the use of nuclear fuel and other radioactive materials. Today, we are proposing to revise certain standards pertaining to spent nuclear fuel (SNF), high-level radioactive waste (HLW), and other radioactive waste (we refer to these items collectively as ''radioactive materials'' or ''waste'') that may be stored or disposed of in the Yucca Mountain repository. (When we discuss storage or disposal in this document in reference to Yucca Mountain, we note that no decision has been made regarding the acceptability of Yucca Mountain for storage or disposal as of the date of this publication. To save space and to avoid excessive repetition, we will not describe Yucca Mountain as a ''potential'' repository; however, we intend this meaning to apply.) Pursuant to Section 801(a) of the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486), these standards apply only to facilities at Yucca Mountain.

Once nuclear reactions have consumed a certain percentage of the uranium or other fissionable material in nuclear reactor fuel, the fuel no longer is useful for its intended purpose. It then is known as ''spent'' nuclear fuel (SNF). It is possible to recover specific radionuclides from SNF through ''reprocessing,'' which is a process that dissolves the SNF, thus separating the radionuclides from one another. Radionuclides not recovered through reprocessing become part of the acidic liquid wastes that the Department of Energy (DOE) plans to convert into various types of solid materials. High-level waste (HLW) is the highly radioactive liquid or solid wastes that result from reprocessing SNF. The SNF that does not undergo reprocessing prior to disposal remains inside the fuel assembly and becomes the final waste form.

In the U.S., SNF and HLW have been produced since the 1940s, mainly as a result of commercial power production and defense activities. Since the inception of the nuclear age, the proper disposal of these wastes has been the responsibility of the Federal government. The Nuclear Waste Policy Act of 1982 (NWPA, 42 U.S.C. Chapter 108) formalizes the current Federal

program for the disposal of SNF and HLW by:

(1) Making DOE responsible for siting, building, and operating an underground geologic repository for the disposal of SNF and HLW;

(2) Directing us to set generally applicable environmental radiation protection standards based on authority established under other laws [1]; and

(3) Requiring the Nuclear Regulatory Commission (NRC) to implement our standards by revising its licensing requirements for SNF and HLW repositories to be consistent with our standards.

This general division of responsibilities continues for the Yucca Mountain repository. Thus, today we are proposing to establish or revise specific aspects of our public health protection standards at 40 CFR part 197 (which are, pursuant to EnPA Section 801(a), applicable only to Yucca Mountain, rather than generally applicable). The NRC will issue implementing regulations for these standards. The DOE plans to submit a license application to NRC. The NRC then will determine whether DOE has met NRC's regulations and whether to grant or deny a license for Yucca Mountain.

In 1985, we established generic standards for the management, storage, and disposal of SNF, HLW, and transuranic (TRU) radioactive waste (see 40 CFR part 191, 50 FR 38066, September 19, 1985), which were intended to apply to any facilities utilized for the storage or disposal of these wastes, including Yucca Mountain. In 1987, the U.S. Court of Appeals for the First Circuit remanded the disposal standards in 40 CFR part 191 (*NRDC* v. *EPA*, 824 F.2d 1258 (1st Cir. 1987)). As discussed below, we later amended and reissued these standards to address issues that the court raised. Also in 1987, the Nuclear Waste Policy Amendments Act (NWPAA, Pub. L. 100–203) amended the NWPA by, among other actions, selecting Yucca Mountain, Nevada, as the only potential site that DOE should characterize for a long-term geologic repository. In October 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579) and the EnPA became law. These statutes changed our obligations concerning radiation standards for the Yucca Mountain candidate repository. The WIPP LWA:

(1) Reinstated the 40 CFR part 191 disposal standards, except those portions that were the specific subject of the remand by the First Circuit;

(2) Required us to issue standards to replace the portion of the challenged standards remanded by the court; and

(3) Exempted the Yucca Mountain site from the 40 CFR part 191 disposal standards.

We issued the amended 40 CFR part 191 disposal standards, which addressed the judicial remand, on December 20, 1993 (58 FR 66398). The EnPA, enacted in 1992, set forth our responsibilities as they relate to Yucca Mountain. In the EnPA, Congress directed us to set public health and safety radiation standards for Yucca Mountain. Specifically, section 801(a)(1) of the EnPA directed us to ''promulgate, by rule, public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site.'' Section 801(a)(2) directed us to contract with the National Academy of Sciences (NAS) to conduct a study to provide us with its findings and recommendations on reasonable standards for protection of public health and safety from releases from the Yucca Mountain disposal system. Moreover, it provided that our standards shall be the only such standards applicable to the Yucca Mountain site and are to be based upon and consistent with NAS's findings and recommendations. On August 1, 1995, NAS released its report, ''Technical Bases for Yucca Mountain Standards'' (the NAS Report) (Docket No. OAR–2005–0083–0076).

A. Promulgation of 40 CFR Part 197 in 2001

Following the direction in the EnPA, we developed standards specifically applicable to releases from radioactive material stored or disposed of in the Yucca Mountain repository. In doing so, we gave special weight to both the NAS Report and our generic standards in 40 CFR part 191, and also considered other relevant information, precedents, and analyses.

We evaluated 40 CFR part 191 because those standards were developed to apply to any site selected for storage and disposal of SNF and HLW, and would have applied to Yucca Mountain had Congress not directed otherwise. Thus, we believed that 40 CFR part 191 already included the major components of standards needed for any specific site, such as Yucca Mountain. However, we recognized that all the components would not necessarily be directly transferable to the situation at Yucca Mountain, and that some modification might be necessary. We also considered that some components of the generic standards would not be carried into site-specific standards, simply because not all of the conditions found among all sites are present at each site. See 66 FR 32076–32078, June 13, 2001 (Docket No. OAR–2005–0083–0042), for a more detailed discussion of the role of 40 CFR part 191 in developing 40 CFR part 197.

We also considered the findings and recommendations of the NAS in developing standards for Yucca Mountain. In some cases, provisions of 40 CFR part 191 were already consistent with NAS's analysis (*e.g.*, level of protection for the individual). In other cases, we used the NAS Report to modify or draw out parts of 40 CFR part 191 to apply more directly to Yucca Mountain (*e.g.*, the stylized drilling scenario for human intrusion). See the NAS Report for a complete description of findings and recommendations.

Because our standards are intended to apply specifically to the Yucca Mountain disposal system, in a number of areas we tailored our approach to consider the characteristics of the site and the local populations. Yucca Mountain is in southwestern Nevada approximately 100 miles northwest of Las Vegas. The eastern part of the site is on the Nevada Test Site (NTS). The northwestern part of the site is on the Nellis Air Force Range. The southwestern part of the site is on Bureau of Land Management land. The area has a desert climate with topography typical of the Basin and Range province. Yucca Mountain is made of layers of ashfalls from volcanic eruptions that happened more than 10 million years ago. There are two major aquifers beneath Yucca Mountain. Regional ground water in the vicinity of Yucca Mountain is believed to flow generally in a south-southeasterly direction. The DOE plans to build the repository about 300 meters below the surface and about 300 to 500 meters above the water table. For more detailed descriptions of Yucca Mountain's geologic and hydrologic characteristics, and the disposal system, please see chapter 7 of the 2001 BID (Docket No. OAR–2005–0083–0050) and the preamble to the proposed rule (64 FR 46979–46980, August 27, 1999, Docket No. OAR–2005–0083–0041).

We proposed standards for Yucca Mountain on August 27, 1999 (64 FR 46976). In response to our proposal, we received more than 800 public comments and conducted four public hearings. After evaluating public comments, we issued final standards (66 FR 32074, June 13, 2001). See the Response to Comments document from that rulemaking for more discussion of

[1] These laws include the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011–2296) and Reorganization Plan No. 3 of 1970 (5 U.S.C. Appendix 1).

comments (Docket No. OAR–2005–0083–0043).

1. What Are the Elements of EPA's 2001 Standards?

We are issuing today's proposal to respond to a ruling by the U.S. Court of Appeals for the District of Columbia Circuit (''the Court'') that vacated portions of 40 CFR part 197. Sections I.B (''Legal Challenges to 40 CFR part 197'') and I.C (''Ruling by U.S. Court of Appeals for the District of Columbia Circuit'') discuss aspects of the legal challenges on which the Court ruled. This section summarizes some of the key provisions and concepts in 40 CFR part 197 to provide a context to better understand the basis for the legal actions and today's proposed action, which is described in Section II of this document (''How Will EPA Address the Decision by the Court of Appeals?'').

The standards issued in 2001 as 40 CFR part 197 included the following:

- A standard to protect the public during storage operations at the Yucca Mountain site;
- An individual-protection standard to protect the public after disposal from releases from the undisturbed repository;
- A human-intrusion standard to protect the public after disposal from releases caused by a drilling penetration into the repository;
- A set of standards to protect ground water from radionuclide contamination caused by releases from the repository after disposal;
- The requirement that compliance with the disposal standards be shown for 10,000 years;
- The requirement that DOE continue its projections for the individual-protection and human-intrusion standards beyond 10,000 years to the time of peak (maximum) dose, and place those projections in the Environmental Impact Statement (EIS);
- The concept of the Reasonably Maximally Exposed Individual (RMEI), defined as a hypothetical person whose lifestyle is representative of the local population, as the individual against whom the disposal standards should be assessed; and
- The concept of a ''controlled area,'' defined as an area immediately surrounding the repository whose geology is considered part of the natural barrier component of the overall disposal system, and inside of which radioactive releases are not regulated.

We emphasize that today's proposal is narrowly focused to respond to the Court ruling. Most sections of our 2001 rule are unaffected by the Court's ruling and are not implicated in today's proposal. We are requesting and will respond to comments only on those provisions we are proposing to change today.

a. What Is the Standard for Storage of the Waste? (Subpart A, §§ 197.1 Through 197.5)

Section 801(a)(1) of the EnPA calls for EPA's public health and safety standards to apply to radioactive materials ''stored or disposed of in the repository at the Yucca Mountain site.'' The repository is the excavated portion of the facility constructed underground within the Yucca Mountain site. The storage standard, therefore, applies to waste inside the repository, prior to disposal.

The DOE also will handle, and might store, radioactive material outside the repository prior to subsurface emplacement. Therefore, our standards will provide public health and safety protection for surface management and storage activities on the surface of the Yucca Mountain site and in the Yucca Mountain repository. The combined doses incurred by any individual in the general environment from these activities must not exceed 150 μSv (15 mrem) committed effective dose equivalent per year (CEDE/yr).

b. What Are the Standards for Disposal? (Subpart B, §§ 197.11 Through 197.36)

Subpart B of our 2001 rule consisted of three separate standards (or sets of standards) that apply after disposal, which are discussed in more detail in the appropriate sections of this document (*e.g.*, Section II.A, ''How Will Elements of the Disposal Standards be Affected?''). For additional detail, see the preamble to the June 2001 rulemaking (66 FR 32074, June 13, 2001). The disposal standards are:

- An individual-protection standard;
- A human-intrusion standard; and
- Ground-water protection standards.

i. What Is the Standard for Protection of Individuals? (§§ 197.20 Through 197.21)

The first standard is an individual-protection standard. It specifies the maximum dose that a reasonably maximally exposed individual (RMEI) may receive from releases from the Yucca Mountain repository.

Our individual-protection standard set a limit of 150 μSv (15 mrem) CEDE/yr. This limit corresponds to an annual risk of fatal cancer within the range that NAS suggested as a ''reasonable starting point for EPA's rulemaking'' (NAS Report p. 5, Docket No. OAR–2005–0083–0076). The NAS s suggested risk range corresponds to approximately 2 to 20 mrem CEDE/yr.

The standard described above applies for a period of 10,000 years after disposal, and is to be measured against exposures to the RMEI at a location outside the controlled area (in the ''accessible environment'').

aa. Who Represents the Exposed Population?

To determine whether the Yucca Mountain disposal system complies with our standard, DOE must calculate the dose received by some individual or group of individuals exposed to releases from the repository and compare the calculated dose with the limit established in the standard. The standard specifies, therefore, the representative individual for whom DOE must make the dose calculation as the RMEI. It was left to NRC to define the details, beyond those which we specified, necessary for the dose calculation. NRC has further defined the RMEI as an adult (10 CFR 63.312(e)) and specified that the average concentration of radionuclides in well water ingested by the RMEI be based on a water demand of 3,000 acre-feet per year (10 CFR 63.312(c)).

The Reasonably Maximally Exposed Individual (RMEI)

The approach we chose (the RMEI) embodies the intent of the internationally-accepted concept to protect those individuals most at risk from the proposed repository but specifies one or a few site-specific parameters at their maximum values. The characteristics of the RMEI are defined from consideration of current population distribution and ground-water usage, and average food consumption patterns for the population downgradient from Yucca Mountain in Amargosa Valley, Nevada.

Our RMEI is a theoretical individual representative of a future population group or community termed ''rural-residential'' (see Chapter 8 of the 2001 BID for a description of this concept, Docket No. OAR–2005–0083–0050). We assume that the rural-residential RMEI is exposed through the same general pathways as a subsistence farmer. However, this RMEI would not be a full-time farmer. Rather, the RMEI might do personal gardening and earn income from other sources of work in the area. Under our standard, the RMEI will have food and water intake rates, diet, and physiology similar to those of individuals living in Amargosa Valley, Nevada. We assume that all of the drinking water and some of the food (based upon surveys) consumed by the RMEI is from the local area. Similarly, we assume that local food production

will use water contaminated with radionuclides released from the disposal system. We believe this lifestyle is conservative but similar to that of most people living in Amargosa Valley today.

Location of the RMEI. The location of the RMEI is a basic part of the exposure scenario. We require that the RMEI be located in the accessible environment (*i.e.*, outside the controlled area) above the highest concentration of radionuclides in the plume of contamination. Based upon a review of available site-specific information (see Chapter 8 of the 2001 BID, Docket No. OAR–2005–0083–0050), we identified the southern edge of the Nevada Test Site as the southernmost extent of the controlled area. The actual compliance point will be determined through the licensing process. (Even if the RMEI were to be located north of this line of latitude, the RMEI must still have the characteristics described in § 197.21.) As discussed in Section I.B (''Legal Challenges to 40 CFR part 197'') and I.C (''Ruling by the U.S. Court of Appeals for the District of Columbia Circuit''), the location of the RMEI was a subject of the Court decision, was upheld, and is not a subject of today's proposal.

bb. How Far Into the Future Must Performance Be Assessed?

In 2001, we established a compliance period of 10,000 years. Under the 2001 standards, the peak dose within 10,000 years after disposal would be required to comply with the individual-protection standard. In addition, we required calculation of the peak dose beyond 10,000 years, but within the period of geologic stability. We required DOE to include the results and bases of the additional analyses in the EIS for Yucca Mountain as an indicator of the future performance of the disposal system. The rule did not, however, require that DOE meet a specific dose limit after 10,000 years. The compliance period was a subject of the Court decision and is the primary subject of today's proposal.

ii. What Is the Standard for Human Intrusion? (§§ 197.25 Through 197.26)

We adopted NAS's suggested starting point for a human-intrusion scenario. As NAS recommended, our standard required a single-borehole intrusion scenario based upon Yucca Mountain-specific conditions. The intended purpose of analyzing this scenario ''* * * is to examine the site- and design-related aspects of repository performance under an assumed intrusion scenario to inform a qualitative judgment'' (NAS Report p. 111). The assessment would result in a calculated RMEI dose arriving through the pathway created by the assumed borehole (with no other releases included). Consistent with the NAS Report, we also required ''that the conditional risk as a result of the assumed intrusion scenario should be no greater than the risk levels that would be acceptable for the undisturbed-repository case'' (NAS Report p. 113). We interpreted NAS's term ''undisturbed'' to mean that the Yucca Mountain disposal system is not disturbed by human intrusion but that other processes or events that are likely to occur could disturb the system.

The DOE is not required to use probabilistic performance assessment for the human-intrusion analysis, as it is for the individual-protection standard. However, if it chooses to do so, we required that the human-intrusion analysis of disposal system performance use the same methods and RMEI characteristics for the performance assessment as those required for the individual-protection standard, with the exception that the human-intrusion analysis would exclude unlikely natural features, events, and processes (FEPs).

The DOE must determine when the intrusion would occur based upon the earliest time that current technology and practices could lead to waste package penetration without the drillers noticing the canister penetration. In general, we believe that the time frame for the drilling intrusion should be within the period that a small percentage of the waste packages have failed but before significant migration of radionuclides from the engineered barrier system has occurred because, based upon our understanding of drilling practices, this period would be about the earliest time that a driller would not recognize an impact with a waste package.

The compliance standard for human intrusion parallels that for the individual-protection scenario. If the intrusion were to occur at or earlier than 10,000 years after disposal, DOE must demonstrate a reasonable expectation that annual exposures incurred by the RMEI within 10,000 years as a result of the intrusion event would not exceed 150 μSv (15 mrem) CEDE. However, if the intrusion occurred after 10,000 years, or when earlier intrusions result in exposures projected to occur after 10,000 years, DOE would not have to compare its results against a numerical standard, but would have to include those results in its EIS.

iii. What Are the Standards To Protect Ground Water? (§§ 197.30 Through 197.31)

We established separate ground-water standards as a means to protect the aquifer as both a resource for current users and a potential resource for larger numbers of future users either near the repository or farther away in communities comprised of a substantially larger number of people than presently exist in the vicinity of Yucca Mountain. The standards DOE must meet are equivalent to the radionuclide Maximum Contaminant Levels (MCLs) established for drinking water.

To implement the ground-water protection standards in § 197.30, we required that DOE use the concept of a ''representative volume'' of ground water (§ 197.31). Under this approach, DOE must project the concentration of radionuclides or the resultant doses within a ''representative volume'' of ground water for comparison against the standards. We selected a value of 3,000 acre-ft/yr as a ''cautious, but reasonable'' figure for the representative volume. Section 197.31 also describes two methods by which DOE may calculate radionuclide concentrations in ground water. See the preamble to the 2001 rulemaking for more discussion of the representative volume and approaches for calculating radionuclide concentrations for compliance purposes.

As with the individual-protection standard, compliance with the ground-water protection standards must be determined at the point of highest concentration in the plume of contamination in the accessible environment. The controlled area was defined in the same way as for the individual-protection standard. The ground-water protection standards were a subject of the Court decision, were upheld, and are not a subject of today's proposal.

c. What Is ''Reasonable Expectation''? (§ 197.14)

An important provision of our standards is the establishment of the principle of ''reasonable expectation'' to guide implementation of our standards and provide context for evaluating projections against the numerical compliance standards discussed above. It is a critical element in implementing our standards, but its importance might easily be overlooked or misunderstood. We use the concept of ''reasonable expectation'' in these standards to reflect our intent regarding the level of ''proof'' necessary for NRC to determine whether the projected performance of

the Yucca Mountain disposal system complies with the standards (see §§ 197.20, 197.25, and 197.30). In issuing our 2001 standards, we noted that this term is meant to convey our position that unequivocal numerical proof of compliance is neither necessary nor likely to be obtained for geologic disposal systems. We believe unequivocal proof is not possible because of the extremely long time periods involved and because disposal system performance assessments require extrapolations of conditions and the actions of processes that govern disposal system performance over those long time periods.

The primary means for demonstrating compliance with the standards is the use of computer modeling to project the performance of the disposal system under the range of expected conditions. These modeling calculations involve the extrapolation of site conditions and the interactions of important processes over long time periods, extrapolations that involve inherent uncertainties in the necessarily limited amount of information that can be collected through field and laboratory studies and the unavoidable uncertainties involved in simulating the complex and time-variable processes and events involved in long-term disposal system performance. Overly conservative assumptions made in developing performance scenarios can bias the analyses in the direction of unrealistically extreme situations, which in reality may be highly improbable, and can deflect attention from questions critical to developing an adequate understanding of the expected features, events, and processes (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Sections 11 and 12, July 2005, Docket No. OAR–2005–0083–0085). The reasonable expectation approach focuses attention on understanding the uncertainties in projecting disposal system performance so that regulatory decision making will be done with a full understanding of the uncertainties involved. Thus, realistic analyses are preferred over conservative and bounding assumptions, to the extent practical.

B. Legal Challenges to 40 CFR Part 197

Various aspects of our standards were challenged in lawsuits filed with the U.S. Court of Appeals for the District of Columbia Circuit in July 2001. Oral arguments were conducted on January 14, 2004. These challenges and the outcome are described in the following sections.

1. Challenges by the State of Nevada and Natural Resources Defense Council

The State of Nevada, the Natural Resources Defense Council (NRDC), and several other environmental and public interest groups challenged several aspects of our final standards on the grounds that they were insufficiently protective and had not been adequately justified. Specifically, they claimed that:

- EPA's promulgation of standards that apply for 10,000 years after disposal violates the EnPA because such standards are not ''based upon and consistent with'' the findings and recommendations of the NAS. NAS recommended standards that would apply to the time of maximum risk and stated that there is ''no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value.''
- The size of the controlled area defined by EPA, which represents the maximum extent of the disposal system and inside which DOE need not demonstrate compliance with the EPA standards, rests on inappropriate assumptions regarding the ability of people to live closer to the repository and violates the Safe Drinking Water Act provisions against endangering sources of drinking water.
- EPA's definition of ''disposal'' in 40 CFR 197.12 deviates from the definition in the NWPA by inserting the qualifying phrase ''for as long as reasonably possible,'' suggesting that the Yucca Mountain disposal system would be held to a lesser standard of protection because it would not have to provide ''permanent isolation.''

2. Challenge by the Nuclear Energy Institute

The Nuclear Energy Institute (NEI) is a trade organization representing nuclear power producers, who collect a surcharge from ratepayers for the Nuclear Waste Fund (established by the NWPA, *see* 42 U.S.C. 10222). NEI challenged the ground-water protection provisions in 40 CFR 197.30 on several grounds, including that:

- They conflict with the direction in the EnPA that EPA issue standards ''based upon and consistent with the findings and recommendations of'' NAS and that EPA's ''standards shall prescribe the maximum annual effective dose equivalent * * * from releases * * * from radioactive materials stored or disposed of in the repository.'' NEI argued that EPA's ground-water standards: (1) were in a form other than effective dose equivalent (EDE); (2) were not recommended by NAS, which stated that such standards were not ''necessary to limit risks to individuals'' (NAS Report p. 121); and (3) were not limited to releases from the repository because they require that DOE consider natural background when determining compliance.
- The science underlying the ground-water standards uses the outdated ''critical organ'' methodology, which results in inconsistent risk estimates and is inconsistent with other radiation-protection standards.
- EPA justified its ground-water standards on cost grounds without conducting a thorough cost-benefit analysis; NEI believes such an analysis would show that the ground-water standards provide no benefit to public health but will increase the cost and slow the construction of the repository.
- EPA is inappropriately applying drinking water standards, which were derived to apply to customers of public water supplies (*i.e.*, ''at the tap'') to ground water.

C. Ruling by the U.S. Court of Appeals for the District of Columbia Circuit

Oral arguments for the challenges described above were heard on January 14, 2004. The challenges to EPA's standards were consolidated with challenges to NRC's licensing requirements, DOE's siting guidelines, and the Presidential recommendation of the Yucca Mountain site and the subsequent Congressional resolution. The Court's ruling was handed down on July 9, 2004. The Court upheld EPA's Yucca Mountain rule in all respects, save for the regulatory compliance period.

1. What Did the Court of Appeals Rule on the Issue of Compliance Period?

The Court upheld the challenge to EPA's 10,000-year compliance period, ruling that EPA's action was not ''based upon and consistent with'' the NAS Report, and that EPA had not sufficiently justified its decision to apply compliance standards only to the first 10,000 years after disposal on policy grounds. *Nuclear Energy Institute* v. *Environmental Protection Agency*, 373 F.3d 1 (D.C. Cir. 2004) (*NEI*) (Docket No. OAR–2005–0083–0080). On that point, the Court stated that:

> NAS's conclusion that EPA ''might choose to establish consistent policies'' is of little importance * * * And although our case law makes clear that a phrase like ''based upon and consistent with'' does not require EPA to hew rigidly to NAS's findings, EnPA Section 801(a) cannot reasonably be read to allow a regulation wholly inconsistent with NAS recommendations. (*NEI*, 373 F.3d at 30.)

Similarly, the Court rejected EPA's reasoning that the requirement of 40

CFR 197.35 that DOE project performance to the time of peak dose and place those projections in the Environmental Impact Statement (EIS) addressed the intent of the NAS recommendation by ensuring that assessments would not be arbitrarily cut off at some earlier time:

> Although EPA's addition of this provision might well represent a nod to NAS, it hardly makes the agency's regulation consistent with the Academy's findings. NAS recommended that the compliance period extend to the time of peak risk, yet EPA's rule requires only that DOE *calculate* peak doses and expressly provides that ''[n]o regulatory standard applies to the results of this analysis.'' (*Id.* at 31, emphasis in original)

While the Court suggested that under different circumstances the Agency's standard might have been upheld, it nevertheless rejected the Agency's limitation of the compliance period to 10,000 years:

> In sum, because EPA's chosen compliance period sharply differs from NAS's findings and recommendations, it represents an unreasonable construction of section 801(a) of the Energy Policy Act. Although EnPA's ''based upon and consistent with'' mandate leaves EPA with some flexibility in crafting standards in light of NAS's findings, EPA may not stretch this flexibility to cover standards that are inconsistent with the NAS Report. Had EPA begun with the Academy's recommendation to base the compliance period on peak dosage and then made adjustments to accommodate policy considerations not considered by NAS, this might be a very different case. But as the foregoing discussion demonstrates, EPA wholly rejected the Academy's recommendations. We will thus vacate part 197 to the extent that it requires DOE to show compliance for only 10,000 years following disposal. (*Id.* at 31.)

Finally, the Court concluded that ''we vacate 40 CFR part 197 to the extent that it incorporates a 10,000-year compliance period'' * * * (*Id.* at 100.) The Court did not address the protectiveness of the 150 Sv/yr (15 mrem/yr) dose standard applied over the 10,000-year compliance period, nor was the protectiveness of the standard challenged. It ruled only that the compliance period could not be found consistent with or based upon the NAS findings and recommendations, and therefore was contrary to the plain language of the EnPA.

a. What Were NAS's Findings (''Conclusions'') and Recommendations on the Issue of Compliance Period?

As the Court noted, NAS stated that it had found ''no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value,'' and that ''compliance assessment is feasible * * * on the time scale of the long-term stability of the fundamental geologic regime—a time scale that is on the order of 10^6 years at Yucca Mountain.'' As a result, and given that ''at least some potentially important exposures might not occur until after several hundred thousand years * * * we recommend that compliance assessment be conducted for the time when the greatest risk occurs'' (NAS Report pp. 6–7).

However, NAS also stated ''although the selection of a time period of applicability has scientific elements, it also has policy aspects that we have not addressed. For example, EPA might choose to establish consistent policies for managing risks from disposal of both long-lived hazardous nonradioactive materials and radioactive materials' (NAS Report p. 56).

2. What Did the Court of Appeals Rule on Other Issues Related to EPA's Standards?

The Court did not sustain any of the other challenges lodged by Nevada, NRDC, or NEI. Instead, the Court found that:

- In defining the controlled area, EPA's conclusions regarding the likely extent of the future population and their exposures were reasonable. Further, the provisions of the Safe Drinking Water Act do not apply at Yucca Mountain (by virtue of the EnPA statement that EPA's standards ''shall be the only standards applicable to the Yucca Mountain site''). (*NEI*, 373 F. 3d at 32–38.)
- EPA is not bound to follow the NWPA definition of ''disposal'' because the enabling authority for this action is the EnPA, which does not require that NWPA definitions be used and does not itself define ''disposal.'' Therefore, EPA acted reasonably ''in filling that statutory gap.'' (*Id.* at 38–39.)
- EPA's interpretation of the EnPA as permitting separate ground-water standards is reasonable because: (1) The EnPA does not restrict EPA to establish *only* EDE standards, but requires that EPA ''establish a set of health and safety standards, at least one of which must include an EDE-based, individual-protection standard''; (2) NAS made no ''finding or recommendation'' either for or against a ground-water standard, so consistency with NAS is not at issue; and (3) ''Part 197 * * * does not regulate background radiation * * * the rule requires only that DOE take background levels into account when measuring permissible releases of radionuclides from the repository. Therefore, part 197 could not possibly run afoul of EnPA's focus on released radiation.'' (*Id.* at 43–48.)
- NEI's arbitrary and capricious arguments in *NEI* were the same as the arguments that NEI had raised in a challenge to EPA's radionuclide MCLs under the Safe Drinking Water Act, which the Court had rejected only one year previously in *City of Waukesha* v. *EPA*. (*Id.* at 48–49.)
- EPA ''unremarkably'' concluded that ground-water protection standards represent sound pollution prevention policy and will encourage a more robust repository design. This reasoning prevailed with the Court on both the cost-effectiveness and ''at the tap'' challenges. (*Id.* at 49–50.)

II. How Will EPA Address the Decision by the Court of Appeals?

As promulgated, 40 CFR part 197 contained four sets of standards against which compliance would be assessed. The storage standard applies to exposures of the general public during the operational period, when waste is received at the site, handled in preparation for emplacement in the repository, emplaced in the repository, and stored in the repository until final closure. The three disposal standards apply to releases of radionuclides from the disposal system after final closure, and include an individual-protection standard, a human-intrusion standard, and a set of ground-water protection standards.

In today's action, we are not proposing to revise all of these standards, only those affected by the Court decision. Therefore, we are proposing to revise only the individual-protection and human-intrusion standards, along with certain supporting provisions related to the way DOE must consider features, events, and processes (FEPs) in its compliance analyses. In addition, we are proposing to adopt updated scientific factors for calculating doses to show compliance with the storage, individual-protection, and human-intrusion standards, as described in more detail in Section II.C.6. We are not proposing to change any aspect of the ground-water protection standards. We are providing notice and requesting public comment only on our proposed revisions to 40 CFR part 197. With the exception of the updated factors for calculating doses for the storage standard, we are not requesting and will not consider public comment on either the storage or ground-water protection standards. Furthermore, we are not requesting, nor will we consider, comments on those aspects of the individual-protection and

human-intrusion standards to which no changes are proposed.

We are proposing to address the Court's decision by revising elements of our standards to incorporate the time of peak dose into the determination of compliance. We are also proposing to further delineate how DOE should incorporate features, events, and processes that may take place over very long times into its calculation of peak dose, consistent with our ''reasonable expectation'' standard.

A. How Will Elements of the Disposal Standards be Affected?

The Court's ruling vacated only one aspect of 40 CFR part 197, the 10,000-year compliance period. Thus, we considered the language and reasoning of the Court's decision to determine its applicability to each element of the disposal standards. The three main components of the standards are discussed in the following sections. We also considered the need to modify certain other aspects that would influence how DOE would conduct its performance assessments beyond 10,000 years. These aspects are discussed in more detail in Section II.D (''How Will Today's Proposal Affect the Way DOE Conducts Performance Assessments?'').

1. Individual-Protection Standard

The Court's decision clearly affects the compliance period for the individual-protection standard, which is the primary standard for public health and safety called for by the EnPA. The legal challenge and the Court's response left no doubt that the compliance period for the individual-protection standard was at issue and the decision centered on the NAS's recommendation regarding the compliance period for the individual-protection standard. Therefore, as described in Section II.C, we are proposing today to modify the individual-protection standard to incorporate a compliance measure effective at the time of peak dose, in addition to the 15 mrem/yr standard applicable for the first 10,000 years after disposal, which we are retaining.

Section I.A.1.b.i discusses other elements of the individual-protection standard, specifically the definition of the controlled area and the use of the RMEI as the representative exposed person. We are not modifying the definition of the controlled area, which was upheld by the Court. We have described the maximum extent of the area, using current conditions and relatively near-term plans for development. The actual compliance point will be determined through the licensing process, and DOE will have to justify its reasons for selecting a particular location to NRC.

Similarly, we are not proposing to alter the description of the RMEI as a person having a ''rural-residential'' lifestyle as reflected in today's population. We have described at length our reasons for using current characteristics as an appropriate means to avoid excessive speculation about which of the infinite number of possible future lifestyles would be most representative over very long periods (*see* 66 FR 32088–32094 (Docket No. OAR–2005–0083–0042) and Section 4 of the Response to Comments document for the 2001 rulemaking (Docket No. OAR–2005–0083–0050)). Some comments on our 1999 proposal disagreed with our reasoning and choice of RMEI. We recognize that interested parties may see an extension of the compliance period as justifying a different description for the RMEI, at least for time frames well beyond 10,000 years. They may point to climate change scenarios as potentially making the ''rural-residential'' lifestyle as it is defined in our 2001 rule incompatible with climate change assumptions. It may be argued that climate change could significantly affect the types of locally grown food in the RMEI's diet, as well as the use of contaminated ground water for irrigation or watering livestock, which would ultimately influence exposures. NAS alluded to such a possibility, noting that one effect of climate change could be ''a shift in the distribution and activities of human populations'' (NAS Report p. 92). However, NAS also concluded that ''there is no simple relation between future climatic conditions and future population'' (NAS Report p. 92). We agree that it is difficult to predict exactly how climate change, or other evolutionary scenarios, would influence lifestyles, nor can we predict the viability or distribution of agricultural activities compared with those pursued today. In fact, we believe that the RMEI as a current ''rural-residential'' individual may be among the more conservative possibilities. Given the importance of irrigation and other uses of ground water in the Amargosa Valley region, it is likely that potential exposures to contaminated ground water would be lower under many wetter climate change scenarios where greater precipitation could reduce the use of ground water for irrigation and other practices.

Some commenters might question whether it is important to have internal consistency between climate/biosphere characteristics and RMEI lifestyle and characteristics. We believe that it would be highly speculative to select RMEI characteristics to correspond to some future climate state. We require that DOE consider climate change within 10,000 years, and are proposing today also to require consideration of climate change for much longer times (*see* Section II.D.2.d, ''Consideration of Climatological FEPs''). As noted above, we believe the present-day RMEI represents a conservative choice if, as seems likely, future climate in the Yucca Mountain region tends to be cooler and wetter. Under wetter conditions, agricultural activities around the site area would rely less on irrigation using well water. With less use of contaminated ground water for irrigation, the contribution to the RMEI dose from contaminated food would presumably be lowered or perhaps eliminated. In counterpoint, under wetter conditions, it is possible to speculate that individuals could live closer to the repository than is considered for present-day conditions and potentially tap contaminated ground waters closer to Yucca Mountain than at the RMEI location. We believe that the RMEI, as presently defined for present-day conditions, is a reasonably conservative approach for the dose assessments, and is appropriate for wetter climate conditions. Assumptions regarding the possible uses of ground water are quite speculative and have been avoided to the extent possible in the setting of the standards (66 FR 32111). Therefore we are not redefining the RMEI characteristics in any attempt to correlate them with climatic variations, primarily due to speculation regarding the uses of ground water by man. As noted above, this approach is consistent with the NAS's conclusion that there is no exact correlation between potential climate changes and shifts in the distribution and activities of human populations. Comments on the definition of the controlled area and specification of the RMEI are outside the scope of today's proposal. We will not consider or respond to comments on these topics.

2. Human-Intrusion Standard

While the Court did not specifically address the human-intrusion standard, we believe it is logical and defensible to modify it to parallel the individual-protection standard. Like the individual-protection standard, our provisions for human intrusion envisioned some consideration of performance beyond 10,000 years. The 2001 standard required that DOE determine when an intrusion by drilling would be possible and assess the consequences. The resulting exposures

were then subject to the same compliance standard as the individual-protection standard (15 mrem/yr at 10,000 years or earlier and dose projections beyond 10,000 years to be compiled in the EIS). In proposing revisions to the human-intrusion standard to conform to changes we are proposing to make to the individual-protection provisions, we are adhering to the NAS recommendation that ''EPA require that the estimated risk calculated from the assumed intrusion scenario be no greater than the risk limit adopted for the undisturbed-repository case'' (NAS Report p. 12). In light of this recommendation, and the Court's interpretation of how closely we must align with the NAS recommendations to be deemed ''based upon and consistent,'' we believe it is both prudent and reasonable to propose to revise the human-intrusion standards to incorporate peak dose compliance measures that conform to the proposed revisions for individual protection.

Aside from the application of dose standards at both 10,000 years and the time of peak dose, the foundation of the proposed revised human-intrusion standard is unchanged. DOE must determine the earliest time at which it would be possible to penetrate waste packages by drilling. The scenario described in § 197.26 would still apply (*i.e.*, penetration of a single package, direct pathway to ground water, etc.). The decision to apply a regulatory standard for the period of geologic stability does not in any way affect the reasoning underlying the selection of this scenario. It remains fully consistent with the NAS conclusion that at Yucca Mountain ''there is no scientific basis for estimating the probability of intrusion at far-future times'' (NAS Report p. 106). Instead, NAS recommended that ''the result of the analysis should not be integrated into an assessment of repository performance based on risk, but rather should be considered separately. The purpose of this consequence analysis is to evaluate the resilience of the repository to intrusion'' (NAS Report p. 109). NAS further suggested that EPA describe a ''stylized'' intrusion scenario based on current drilling technologies, an approach we adopted in § 197.26 and which will remain unchanged by today's proposal.

The circumstances of the intrusion scenario in § 197.26 are required to be developed based on present-day practices, in accordance with the NAS recommendation. This approach was fully justified for the reasons given by NAS and unchallenged for the 10,000-year time frame. We find that maintaining the approach beyond 10,000 years is also fully justified and consistent with the NAS for the same reasons. If anything, it would be even more speculative to attempt to project changes to the circumstances of the intrusion at time frames potentially out to 1 million years. Furthermore, in keeping with the purpose of the human-intrusion analysis as a test of repository resilience, it is appropriate to continue to exclude unlikely natural events and processes from the analysis.

The intrusion scenario requires consideration of package degradation, premised on the assumption that drillers encountering an intact package would cease drilling and releases would be avoided. We believe that this assumption is equally valid both within and beyond a 10,000-year time frame. In our 2001 rule, DOE would not have been required to demonstrate compliance with a dose limit if packages were determined not to degrade sufficiently within 10,000 years to permit intrusion (or, in any event, if the consequences of the intrusion were not calculated to occur within 10,000 years). We are proposing to modify our rule to require that DOE show compliance with a dose limit regardless of when the consequences of the intrusion occur. Consistent with the proposed revised individual-protection standard, DOE will have to show compliance with a peak dose standard beyond 10,000 years, in addition to a 150 μSv/yr (15 mrem/yr) standard applicable up to 10,000 years. The dose standard that applies to exposures to the RMEI through the period of geologic stability will be the same as for the individual-protection standard (*see* Section II.C.3, ''What Dose Level is EPA Proposing for Peak Dose?''). Overall, this scenario continues to represent a reasonable test that ''can provide useful insight into the degree to which the ability of a repository to protect public health would be degraded by intrusion'' (NAS Report p. 108). We are not soliciting, and will not consider, comments on the overall intrusion scenario or other aspects of the human-intrusion standard that are not proposed to be changed.

3. Ground-Water Protection Standards

The Court's decision does not affect the ground-water protection standards. The Court upheld our statutory reading of the EnPA as providing the authority to establish such standards as the Agency deemed necessary to supplement the individual-protection standard, as well as the scientific basis of those standards. (*See NEI*, 373 F.3d at 43–48, Docket No. OAR–2005–0083–0080.) The Court further concluded that our reasoning for including such a standard as a means to protect the ground-water resource was sound and consistent with the Agency's overall pollution prevention policies. Regarding consistency with the NAS recommendations, the Court stated that:

> Although we concluded earlier in this opinion that EPA violated section 801's ''based upon and consistent with'' requirement by adopting a 10,000-year compliance period, we reach the opposite conclusion here because NAS treated the compliance-period and ground-water issues quite differently. Whereas NAS expressly rejected a 10,000-year compliance period, it said nothing at all about the need to add a separate ground-water standard * * * Put another way, NAS made no ''finding'' or ''recommendation'' that EPA's regulation could fail to be ''based upon and consistent with.''

NEI, 373 F.3d at 46–47.

As a result, we do not believe the Court's ruling regarding the 10,000-year compliance period applies to the ground-water protection standards, which have the same compliance period. Further, unlike the individual-protection and human-intrusion standards, we never envisioned that DOE would project its compliance with the ground-water protection standards beyond 10,000 years, even for inclusion in the EIS. The Court decision leaves EPA with discretion in formulating the provisions for ground-water standards. We believe (and the Court agreed) that the application over 10,000 years of limits equivalent to MCLs is a conservative but reasonable regulatory scheme that represents sound pollution prevention policy. Furthermore, protection of public health from releases to ground water over times beyond 10,000 years will be provided by extending the individual-protection standard to the time of peak dose, which accounts for transport and exposure through all pathways. For these reasons, we are not proposing to modify the ground-water protection standards, either by extending the period of compliance or in any other respect. We are not requesting, and will not consider, comments regarding any aspect of the ground-water protection standards.

4. Reasonable Expectation

''Reasonable expectation'' is the compliance concept underlying our disposal standards. That is, we require that DOE show a ''reasonable expectation'' that the standards will be met. As discussed extensively in our 2001 Yucca Mountain rulemaking, ''proof'' of disposal system performance

in the traditional sense of the word cannot be attained for periods extending into the thousands or hundreds of thousands of years (66 FR 32101–32103, June 13, 2001, Docket No. OAR–2005–0083–0042). In such situations, it is a natural tendency to give greater emphasis to aspects that may not be the most likely to occur, but have the potential to significantly affect performance. This may be particularly true in areas where physical data are limited. However, assessments that are built around conservative assumptions at every decision point may in fact result in highly unrealistic performance projections. Simplifications and assumptions are involved out of necessity because of the complexity and time frames involved, and the choices made will determine the extent to which modeling simulations realistically simulate the disposal system's performance. If choices are made that make the simulations very unrealistic, the confidence that can be placed on modeling results is very limited. The uncertainties involved with these simplifications must be recognized. Overly conservative assumptions made in developing performance scenarios can bias the analyses in the direction of unrealistically extreme situations, which in reality may be highly improbable, and can deflect attention from questions critical to developing an adequate understanding of the expected features, events, and processes. ''Reasonable expectation'' encourages the use of ''cautious, but reasonable'' assumptions and discourages the reliance on highly conservative assumptions. It recognizes that projections of disposal system performance over very long times are best viewed as indicators of performance, rather than as firm predictions. It further requires the applicant and regulator to focus on the full range of outcomes and not to give greater weight to certain projections simply because they are more conservative.

The concept of ''reasonable expectation'' was a guiding principle in the formulation of our 2001 standards. We believe the concept is equally applicable for periods well beyond 10,000 years, and is in fact more important for very long time periods. In our view, it is ''reasonable'' to consider approaches for uncertainties in calculations at several hundred thousand years that may differ from the approach for uncertainties considered within 10,000 years after disposal. An approach applying standards ''acceptable today for the period of geologic stability would ignore this cumulative uncertainty and the extreme difficulty of using highly uncertain assessment results to determine compliance with that standard'' (66 FR 32098, June 13, 2001, Docket No. OAR–2005–0083–0042). We therefore emphasize the primacy of ''reasonable expectation'' in compliance with 40 CFR part 197 and retain it without change. However, we have considered how DOE and NRC might need to approach the concept to account for the much greater overall uncertainty in projections over periods as long as 1 million years. Section II.B describes the overall concept of ''reasonable expectation'' and our thoughts for today's proposal in more detail.

5. Effects of Uncertainty

We believe that the most problematic aspect of extending the compliance period to peak dose is the uncertainty involved in making projections over such long time frames, which we discussed in some detail in our proposed and final rulemakings in 1999 and 2001, respectively. This remains a critical factor in formulating today's proposal, which we feel must be emphasized and explored in detail. Although we refer generally to ''uncertainties'' throughout this document, it may not always be clear to readers exactly what we mean by this term, why their effects are difficult to manage, and why they should have an impact on the decision-making process. It may be useful to consider an analogous situation that will be readily familiar, such as the tracking of hurricanes.

The strength and path of hurricanes are functions of factors such as temperature, humidity, barometric pressure, and wind speed. There is natural variation in these parameters, and their variation can make the difference between a Category 5 storm (the most severe) striking a populated coastal area and a tropical storm that remains out in the ocean. When one views the projected path of a storm, the surrounding envelope of possible paths expands as one looks into the future and may spread over several hundred miles. The critical task in tracking the storm is identifying which populated areas are in the path of the storm, and whether they must be evacuated.

By this analogy, a 10,000-year dose projection might be comparable to selecting a single town to evacuate when the storm is still two hundred miles from landfall, while a peak dose projection might be more like pinpointing the correct location when a tropical depression first forms thousands of miles away, which may be weeks earlier. Regardless of the level of rigor that can be applied to the technical calculation, it is simply not possible to place the same level of confidence in the two selections. We see similar difficulties in ''predicting'' the ''true'' behavior of the Yucca Mountain disposal system, or the multiple engineered and natural components of that system, for periods on the order of hundreds of thousands of years.

We are aware that some stakeholders dispute our position that uncertainties increase significantly with time, and therefore believe that uncertainty offers little justification for placing less confidence in very long-term projections than can be placed in those that apply over the relatively near term. Some stakeholders, for example, suggest that uncertainty should have little impact on peak dose projections and that DOE should be required to identify where uncertainty, rather than reasonably expected performance, influences dose projections (Docket No. OAR–2005–0083–0029 and 0033). They have pointed to statements in the NAS Report to bolster this position, such as: ''analyses that are uncertain at one time might not be so uncertain at a later time; for example, the uncertainties about cumulative releases to the biosphere that depend on the rate of failure of the waste packages are large in the near term but are smaller later, when enough time has passed that all of the packages will have failed'' (NAS Report pp. 29–30); ''Because there is a continuing increase in uncertainty about most of the parameters describing the repository system farther in the distant future, it might be expected that compliance of the repository in the near term could be assessed with more confidence. This is not necessarily true'' (NAS Report p. 72); ''Detailed estimates of time for canister failure are less important for much longer-term estimates of individual dose or risk'' (NAS Report p. 85).

Although NAS pointed out that uncertainties associated with some disposal system components will decrease over time (*e.g.*, at some time all waste packages will be degraded), our view, and the view of many others (including NAS, as should be clear from the above citation: ''Because there is a continuing increase in uncertainty * * *''), is that uncertainties generally increase with time, at least to the time of peak dose. (*See*, for example, IAEA Draft Safety Requirements DS154, ''Geological Disposal of Radioactive Waste,'' Section A.7, page 37, April 2005 (Docket No. OAR–2005–0083–

0051), which states, ''It is recognized that radiation doses to people in the future can only be estimated and the uncertainties associated with these estimates will increase farther into the future''; the Nuclear Energy Agency report on ''The Handling of Timescales in Assessing Post-Closure Safety,'' pp. 13–14 (Docket No. OAR–2005–0083–0046), which states, ''These events and changes are subject to uncertainties, which generally increase with time and must be taken into account in safety assessments. Eventually, but at very different times for different parts of the system, uncertainties are so large that predictions regarding the evolution of the repository and its environment cannot meaningfully be made''; and the Swiss National Cooperative for the Disposal of Radioactive Waste (Nagra), which states, in Technical Report 02–05 (pp. 27–28) (Docket No. OAR–2005–0083–0075), ''HSK–R–21 [Swiss disposal regulation] acknowledges that there is inevitable uncertainty in model calculations and the further into the future predictions are made, the greater the uncertainty. The implementer has to show what processes and events could affect the repository over the course of time and then to derive and evaluate potential evolution scenarios from these.'') For some aspects of the system, such uncertainties can increase dramatically (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Section 12.3, July 2005, Docket No. OAR–2005–0083–0085). To repeat, we are in agreement with NAS that such projections can be performed and even ''bounded'' to some extent. However, the central question here is how the results of very long-term assessments can have sufficient meaning to provide an adequate basis for a licensing decision that the repository should or should not be approved.

NAS demonstrated some concern with this issue by recognizing that the level of confidence that could be placed in projections was of key importance, and offered constructive guidance in limiting or considering the effects of uncertainties. Unfortunately, the NAS statements on decreasing uncertainty regarding some disposal system components do not draw a clear relationship to the time of peak dose at which it recommended compliance be measured. While we generally agree with these statements, we find that they are most relevant to times after peak dose and, therefore, after the time frame most important from a regulatory perspective. Returning to our hurricane analogy, it is true that uncertainties eventually decrease; one might be able to predict with equal confidence both the storm's location in two hours and that in two weeks it will have completely dissipated. In this sense, one can agree with the NAS's conclusion that ''it is not necessarily true'' that long-term projections are more uncertain than near-term projections. Nevertheless, relatively high confidence about the endpoint of the hurricane has little impact on the ability to predict where and when it might cause the greatest damage along its path. Similarly, for Yucca Mountain, increasing confidence in certain aspects of the system's components (*e.g.*, the endpoint of the waste packages, much like the endpoint of the hurricane) does not necessarily inform estimates of peak dose.

NAS notes that ''uncertainties about cumulative releases'' that ''depend on the rate of failure of the waste packages'' will be lessened at far future times when ''all of the packages will have failed'' (NAS Report p. 28–29). The emphasis here on eventual failure cannot help us when the direction is to assess peak dose. It is self-evident and non-controversial that the engineered barrier system cannot be expected to last forever. However, assumptions regarding ''the rate of failure of waste packages'' are exactly the critical element in estimating the timing and magnitude of the peak dose (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Sections 12.3 and 12.4, July 2005, Docket No. OAR–2005–0083–0085). Thus, identifying factors that would decrease overall system uncertainty at times approaching 1 million years does not adequately support a conclusion that uncertainties can be equally well managed at the time of peak dose, even if that time is much less than 1 million years.

In addressing this larger question of how to consider long-term projections in a regulatory process, we have considered guidance and precedents from international programs. NAS provided important scientific and technical reasoning for evaluating compliance at peak dose, which we augment with guidance from sources who approached the problem of uncertainty from the regulatory perspective. For regulatory compliance over 10,000 years, we were able to identify several (albeit limited) analogous regulatory programs in the U.S., including those for the WIPP and EPA's underground injection control program (see the preamble to the 2001 rulemaking, 66 FR 32098, Docket No. OAR–2005–0083–0042). For time frames extending potentially to 1 million years, there are no precedents in U.S. regulation. In response to the Court decision, therefore, important sources for guidance and models for contemplating regulations at such long times were other international programs grappling with the same issues, namely disposal of highly radioactive and long-lived waste. Throughout this document, we quote extensively from a number of international sources, from both multinational organizations (such as IAEA) and individual countries (such as Sweden). We do this because we find ourselves in a situation that is, if not unique, shared by a rather small circle. We have found it useful to consult the ideas of those faced with a similar situation. In general, they reinforce two points we emphasize throughout this document. The first, which we have already discussed, is that uncertainties generally increase with time. The second point is that projections at those longer times cannot be viewed with the same level of confidence as shorter-term projections, and may in fact be viewed as more qualitative indicators of disposal system performance.

For example, the IAEA has stated that, for periods lasting from about 10,000 to 1 million years, ''While it may be possible to make general predictions about geological conditions, the range of possible biospheric conditions and human behaviour is too wide to allow reliable modelling * * * Such calculations can therefore only be viewed as illustrative and the 'doses' as indicative'' (IAEA–TECDOC–767, ''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' p. 19, 1994, Docket No. OAR–2005–0083–0044). Also, ''[t]he utility of individual numerical indicators will vary greatly and, given the large uncertainties, considerable caution is needed to avoid any suggestion or expectation that any given indicator of disposal system performance can be an accurate estimate of future reality. Such an indicator typically provides only an estimate of what might happen under certain assumed conditions * * * The aim of the assessment is not to predict the actual performance of the disposal system * * * but rather to reach reasonable assurance that it will provide an adequate level of safety'' (IAEA–TECDOC–975, ''Regulatory Decision Making in the Presence of Uncertainty in the Context of the Disposal of Long Lived Radioactive Wastes,'' pp. 22, 24,

1997, Docket No. OAR–2005–0083–0045). Finally, ''[c]are has to be exercised in applying the criteria for periods beyond the time where the uncertainties become so large that the criteria may no longer serve as a reasonable basis for decision making'' (IAEA Draft Safety Requirements DS154, ''Geological Disposal of Radioactive Waste,'' Section A.7, p. 37, April 2005, Docket No. OAR–2005–0083–0051).

The Nuclear Energy Agency (NEA) states that ''[t]here is an increasing consensus among both implementers and regulators that, in carrying out safety assessments, calculations of dose and risk should not be extended to times beyond those for which the assumptions underlying the models and data can be justified * * * Eventually, but at very different times for different parts of the system, uncertainties are so large that predictions regarding the evolution of the repository and its environment cannot meaningfully be made'' (''The Handling of Timescales in Assessing Post-Closure Safety,'' pp. 10, 13, 2004, Docket No. OAR–2005–0083–0046). Similarly, the Swedish Radiation Protection Authority (SSI) has proposed draft guidance for the disposal of SNF, stating that ''[f]or very long periods * * * [t]he intention should be to shed light on the protective capability of the repository and to provide a qualitative picture of the risks'' (p. 7, Docket No. OAR–2005–0083–0048). This draft guidance is intended to supplement SSI's standards (SSI FS 1998:1, September 28, 1998, Docket No. OAR–2005–0083–0047), which require that ''[f]or the first thousand years after disposal, the assessment of the repository's protective capability shall be based on quantitative analyses of the impact on human health and the environment'' (§ 11), but do not specify quantitative analyses as the basis for longer-term assessments (''shall be based on various possible sequences for the development of the repository's properties, its environment and the biosphere,'' § 12).

We acknowledge that detailing the effects of uncertainty is itself uncertain. We recognize that knowledge is not absolute up to 10,000 years, with uncertainties burgeoning shortly beyond that time. We also recognize that there can be considerable uncertainty in measurements of current conditions. Further, we concur with NAS that uncertainties can be qualitatively different for different aspects of the assessment. For example, NAS points out that human behavior can be projected for a few decades at most, while the geologic record can be studied for evidence of processes that have occurred over millions of years (and are still occurring today). However, the assessment of Yucca Mountain's performance depends not only on the ability to project large-scale geologic processes, such as seismicity and volcanism, but also the gradual evolution of complex saturated and unsaturated zone characteristics, such as the chemistry of infiltrating water or the direction and connectivity of a fracture-flow system.

B. How Does the Application of ''Reasonable Expectation'' Influence Today's Proposal?

Under today's proposal, projecting disposal system performance involves the extrapolation of physical conditions and the interaction of natural processes with the wastes for unprecedented time frames in human experience, *i.e.*, possibly hundreds of thousands of years. In this sense, the projections of the disposal system's long-term performance cannot be confirmed. Not only is the projected performance of the disposal system not subject to confirmation, the natural conditions in and around the repository site will vary over time and these changes are also not subject to confirmation, making their use in performance assessments equally problematic over the long-term. In light of these fundamental limitations on assessing the disposal system's long-term performance, we believe that the approach used to evaluate disposal system performance must take into account the fundamental limitations involved and not hold out the prospect of a greater degree of ''proof'' than in reality can be obtained.

There are several fundamental components to be established in setting up and analyzing disposal system performance scenarios. A model must be created that translates the physical processes operating at the site into mathematical statements, such as ground-water flow equations, that can calculate the movement of radionuclides through the various components of the disposal system and into the accessible environment. A model may be very generic or highly sophisticated and tailored to capture distinct aspects of a particular site. Two additional steps are necessary in order to develop dose projections. First, the possible performance scenarios themselves and associated assumptions must be established, and second, the distribution of expected values for the parameters involved in the performance calculations must be determined. The scenarios are developed from an understanding of the natural processes, the engineered barrier design, and the interactions of the engineered barrier system with the repository environment. The range of expected parameter values for the analyses is based upon the results of site characterization studies, laboratory testing, and expert judgment. For both of these components, unrealistic and perhaps extreme choices can be made that would, in effect, give false expectations of disposal system performance, or hide important uncertainties that would, in reality, have important consequences on the performance projections (the model itself may also have conservatisms built into it, which may be even more difficult to identify). If extreme assumptions are made in defining the scenario, a de facto ''worst-case'' scenario is developed at the outset and analyses using the upper end of the range of parameter values result in performance projections that are in fact extreme cases, rather than representing the full range of expected performance. Effectively, such a restrictive approach results in emphasis on what would be the conservative extremes of the probability distributions for the performance assessments and analyses rather than if a realistic approach were taken. In such a case, the regulatory judgment would be focusing on extreme situations, rather than on evaluating safety under reasonably expected conditions. On the other hand, if the scenario were defined more realistically and the same distribution of parameter values used, the resultant distribution of doses would be closer to the actual expected performance and regulatory decisions could be made with confidence that the assessments represent a more realistic range of expected performance. Including multiple ''worst-case'' assumptions in setting up the performance scenarios, combined with selecting conservative values for site-related parameter distributions, actually corresponds to assessing very low-probability/high-consequence scenarios that can then easily be mistaken as expected-case analyses. Under the reasonable expectation approach, expected case as compared to conservative and worst-case assessments are more explicitly identified and the uncertainties presented more directly so that the reasoning behind regulatory decisions can be more easily understood and defended. We note that this approach was also recommended by a joint NEA–IAEA peer review of DOE's TSPA to support its site recommendation, which states in Section 4.1.3 (''Realism or conservatism''):

At a fundamental level, it is useful to resort to a probabilistic analysis of a system evolution in time if a realistic model can be attempted but legitimate uncertainties persist. However, if the starting model is built *a priori* to be conservative, exercising it probabilistically has little or no added value, as one would still obtain conservative results. In the TSPA–SR a hybrid conservative/probabilistic methodology is used, which causes assumptions and reality to be mixed in a confusing way. *In the future it may be appropriate to present: (i) A probabilistic analysis based on a realistic or credible representation; and (ii) a set of complementary analyses with different conservatisms, in order to place the best available knowledge in perspective.* These ancillary analyses could be given a probabilistic weight as well. This should satisfy the regulatory requirements whilst providing a better basis for dialogue and decision-making.

''An International Peer Review of the Yucca Mountain Project TSPA–SR,'' pp. 54–55, 2002, Docket No. OAR–2005–0083–0062, emphasis in original.

In making its decisions, the primary task for NRC is to examine the projections put forward by DOE to determine ''how much is enough'' in terms of the information and analyses presented, *i.e.,* how NRC determines when the analyses provide an acceptable level of confidence and the results can be interpreted in a way meaningful for regulatory compliance. In 40 CFR part 197 as originally promulgated, we did not have specific measures in our standards on how to make that judgment. NRC, as the implementing agency, must be satisfied with DOE's presentation; therefore, we concluded those specific measures of satisfaction were appropriate for NRC to determine. Neither did EPA specify: (1) Confidence measures for such judgments or numerical analyses; (2) analytical methods that must be used for performance assessments; (3) quality assurance measures that must be applied; (4) statistical measures that define the number or complexity of analyses that should be performed; or (5) any assurance measures in addition to the numerical limits in the standards. We specified only that the mean of the dose assessments must meet the exposure limit.

We anticipate that if these very long-range performance projections (beyond 10,000 years) indicate that repository performance would degrade dramatically under a wide range of conditions at some point in time, that this would become a concern in the licensing decision. If such a dramatic deterioration were projected to occur close to the regulatory time period it would be a more pressing concern for licensing decisions than if it were to occur many hundreds of thousands of years into the future (remembering that the uncertainty in performance projections increases with time). With the initial issuance of 40 CFR part 197, EPA elected to leave the handling of the very long-term projections of performance as an implementation decision for the regulatory authority, but to impose the requirement that such analyses be performed and reported in the EIS. The degree of ''weight'' that should be given to these very long-term assessments, we said, is an implementation decision that should be left to NRC to determine, by balancing the projected performance and the inherent uncertainties in these projections against the projected dose levels (2001 Response to Comments, p. 7–13, Docket No. OAR–2005–0083–0043).

We propose to continue this general approach of not specifying the bases or mechanisms for a compliance decision, except that the post-10,000-year analyses are now proposed to be part of the 40 CFR part 197 standards with a quantitative limit imposed.

As noted earlier, the conceptual framework of ''reasonable expectation'' as promulgated in our 2001 rulemaking is applicable even when extending the compliance period to peak dose. In fact, we believe it becomes even more important as the level of confidence that can be placed in numerical projections decreases over time. However, we are not proposing to expand or modify the definition in § 197.14 to account for the greater uncertainty between 10,000 years and the time of peak dose (within 1 million years of disposal). The existing definition describes principles that are applicable for both shorter and very long time frames (although the implications of these principles may be different, depending on the time frame). To provide insight into our interpretation of reasonable expectation at very long times, we provide additional information in the remainder of this section and throughout our discussion of the proposed changes for NRC to consider as it implements our peak dose standard. We believe such guidance will be useful, particularly in the context of handling long-term FEPs, as discussed in Section II.D of this document.

We emphasize that parameters and scenarios should be included in the performance assessment even if they are not among the more highly conservative approaches. There is a tendency in long-term assessment to introduce conservatisms and to focus on the higher-end dose projections, while discounting lower dose projections that may actually be just as probable or perhaps represent higher-probability scenarios. We stress that DOE should work to ensure that the results express the full range of possible outcomes within the bounds of credible scenarios and parameter values. Less conservative scenarios (*i.e.,* lower projected doses) should not be eliminated unless they are deemed to be highly improbable. Of course, the compliance measure will be expressed as a specific statistical measure of the results, not the entire range of results. The entire range of results is context to be used to assist the licensing authority in judging the likelihood of the facility to meet the standards. In that context, the results of the performance assessments are not to be biased by an overemphasis on low-probability scenarios at the expense of results for the entire spectrum of reasonably credible and supportable scenarios and parameter values. Our position is that the reasonable expectation approach accounts for the inherent uncertainties involved in projecting disposal system performance by taking into account a large spectrum of possible parameter values rather than making assumptions that reflect only conservative to very conservative values. We also emphasize that the uncertainties in site characteristics over long time frames, and how the long-term projections of expected performance of the disposal system were made, need to be well understood before regulatory decisions are made. We stress again the purpose of the assessments as expressed by IAEA: ''The aim of the assessment is not to predict the actual performance of the disposal system * * * but rather to reach reasonable assurance that it will provide an adequate level of safety'' (IAEA–TECDOC–975, p. 24, Docket No. OAR–2005–0083–0045). NAS agrees that ''[t]he results of compliance analysis should not, however, be interpreted as accurate predictions of the expected behavior of a geologic repository'' (NAS Report p. 71, Docket No. OAR–2005–0083–0076).

In Section II.D of this document (''How Will Today's Proposal Affect the Way DOE Conducts Performance Assessments?''), we propose to limit speculation over the long compliance period now being addressed by requiring compliance within a performance assessment that continues to emphasize the most significant features, events, and processes. The purpose is to provide a reasonable test of performance over a range of conditions. To do so, we propose to eliminate very unlikely features, events, and processes, and the scenarios

including them, from consideration and specify this in the standards. We believe this is consistent with a finding of the NAS: ''It is always possible to conceive of some circumstance that, however unlikely it may be, will result in someone at some time being exposed to an unacceptable radiation dose * * * The challenge is to define a standard that specifies a high level of protection but that does not rule out an adequately sited and well-designed repository because of highly improbable events'' (NAS Report pp. 27–28). We have chosen to do this by continuing to place reasonable constraints on the scenarios that need to be examined. We believe this is consistent with another finding of the NAS: ''We conclude that the probabilities and consequences of modifications generated by climate change, seismic activity, and volcanic eruptions at Yucca Mountain are sufficiently boundable so that these factors can be included in performance assessments that extend over periods on the order of about 10^6 years'' (NAS Report p. 91). Typically, as we discuss elsewhere in this document, the term ''boundable'' implies a ''worst case'' approach (*i.e.*, a ''bounding analysis'') to assessing the limits of disposal system performance. We do not believe such an approach is appropriate and are not proposing to adopt it. Instead, in this context, we interpret ''boundable'' as referring to limits that may be placed on the scenarios so that they will represent a reasonable test of disposal system performance over the very long term, but not be driven by extreme assumptions or endless speculation. Thus, we view our treatment of these ''modifiers'' as comparable to our specification of a ''stylized'' scenario for human intrusion, and consistent with the NAS statement that ''[i]t is important that the 'rules' for the compliance assessment be established in advance of the licensing process'' (NAS Report p. 73).

In our 1999 preamble to proposed 40 CFR part 197, we said that if we were to regulate longer than 10,000 years, we would expect the licensing judgment to be less strict in relying on dose projections compared to 10,000 years (64 FR 46998, August 17, 1999, Docket No. OAR–2005–0083–0041): ''We note that if the compliance period for the individual-protection standard extended to the time of peak dose within the period of geologic stability (which NAS estimated to be 1 million years for the Yucca Mountain site), this [reasonable expectation] test would allow for decreasing confidence in the numerical results of the performance assessments as the compliance period increases beyond 10,000 years. For example, this means that the weight of evidence necessary, based upon reasonable expectation, for a compliance period of 10,000 years would be greater than that required for a compliance period of hundreds of thousands of years.'' Given the increased uncertainty that is unavoidable in the capabilities of science and technology to project and affect outcomes over the next 1 million years, the concept of reasonable expectation underlying our standards implies that a dose limit for that very long period that is higher than the 15 mrem/yr limit that applies in the relatively ''certain'' pre-10,000-year compliance period could still provide a comparable judgment of overall safety. See Section II.C.3 (''What Dose Level is EPA Proposing for Peak Dose?'') for a specific discussion of the dose limit in today's proposal.

In formulating an approach to compliance out to the time of peak dose, we have established 10,000 years as an indicator for times when uncertainties in projecting performance are more manageable and for which comparisons can be made with other regulated systems. We realize that uncertainties exist within the initial 10,000-year period and that 10,000 years does not represent a strict dividing point between periods over which projections can be made with certainty or not. Clearly, we believe that calculations beyond 10,000 years have value, or we would not have previously required DOE to include them in its EIS. However, we also believe that over the very long periods leading up to the time of the peak dose, the uncertainties in projecting climatic and geologic conditions become extremely difficult to reliably predict and a technical consensus about their effects on projected performance in a licensing process would be very difficult, or perhaps impossible, to achieve. This is one of the major reasons that the 10,000-year time frame was originally selected in the generic standard for land disposal of the types of waste intended for the Yucca Mountain repository (40 CFR part 191) (2001 Response to Comments, p. 7–17, Docket No. OAR–2005–0083–0043). In such a situation, one might conclude that little or no weight should be given to highly uncertain projections as a basis for a licensing decision. Conversely, others might conclude that the inability to produce highly reliable performance estimates should preclude the possibility of licensing at all. Such a conclusion would be inconsistent with any concept of permanent disposal, which necessarily requires examination of time frames and events that cannot be predicted with certainty. We believe that the performance projections at Yucca Mountain, if constructed and interpreted consistent with the concept of ''reasonable expectation,'' can provide useful information on the facility's performance and can form a key part of the basis for a licensing decision. Clearly NAS agreed, since it recognized that significant uncertainties exist, yet nonetheless recommended that projections to peak dose form the basis for EPA's standards to be used in judging compliance for licensing the Yucca Mountain disposal system. NAS further recognized that an approach akin to reasonable expectation is warranted: ''No analysis of compliance will ever constitute an absolute proof; the objective instead is a reasonable level of confidence in analyses that indicates whether limits established by the standard will be exceeded'' (NAS Report p. 71).

C. How Is EPA Proposing To Revise the Individual-Protection Standard (§ 197.20) To Address Peak Dose?

In considering how to revise the individual-protection standard, we have sought an approach that would be:

- Responsive to the Court ruling;
- Protective of public health and safety;
- Reflective of the best science and cognizant of the limits of long-term projections;
- Implementable by NRC in its licensing process; and
- Limited in scope and focused on aspects critical to accomplishing the above goals.

In balancing these goals, we have carefully examined the NAS recommendations and looked more broadly to international models and guidance on long-term radioactive waste disposal. We believe today's proposal satisfies these goals. We believe the first three are straightforward and our reasoning outlined in the next sections will clearly show how they influenced our proposal. The fourth point relates to an essential purpose of our action that can sometimes be overshadowed by emphasis on the NAS recommendations and the Court ruling. As NAS stated, ''standards are only useful if it is possible to make meaningful assessments of future repository performance with which the standards can be compared'' (NAS Report p. 34). Ultimately, NRC must be able to use our standards to judge whether DOE has provided sufficient evidence that the disposal system will be protective of public health and safety. While there are

significant scientific aspects to this decision, regulatory judgment must bridge the gap between what science can show and the unprecedented time frames involved. The licensing process must consider the confidence that can be placed in performance assessments used to represent disposal system evolution and the information necessary to make a decision. Our ''reasonable expectation'' standard is critical to making this judgment.

The last point above refers to the legal status of our rule. Today's proposal is specifically targeted toward addressing the Court ruling regarding the compliance period. Many other aspects of our rule were either upheld by the Court or not challenged. As discussed in Section II.A, we are not revisiting those issues.

In a similar vein, when considering potential approaches to address the Court's decision, we did not feel constrained by our actions in the 2001 rulemaking. Nor do we believe that rejecting certain approaches in that rulemaking creates a legal barrier to incorporating them into today's proposal. Our preferred approach was rejected by the Court in favor of a compliance standard applicable at the time of peak dose, whenever it might occur within the period of geologic stability. In our 2001 rulemaking, we considered, discussed, and accepted comment on the length of the compliance period, including consideration of the time of peak dose. We ultimately chose not to establish a compliance period applicable throughout the period of geologic stability. Thus, it is difficult to see how we could satisfy the Court's ruling if we were not permitted to reconsider or revise our previous conclusions.

1. Multiple Dose Standards Applicable to Different Compliance Periods

In balancing the considerations described above, the central problem is to determine what is achievable in terms of the reliability of dose projections. Our task was clearly presented by the Court, and our starting position is to fulfill that task by proposing a compliance standard at the time of peak dose, whenever it might occur within the period of geologic stability. We have discussed at length our concerns regarding the quality of very long-term projections and their application in a licensing process; even in light of the Court decision, those concerns remain. However, we also believe it is clear that shorter-term projections do have sufficient reliability to serve as the basis for regulatory decision-making. On the one hand, we do not want to place more regulatory emphasis on peak dose projections than can be justified; on the other, a standard effective at relatively short times, where we believe such emphasis is warranted, is unlikely on its own to be responsive to the Court ruling. We have sought to reconcile these two extremes in order to satisfy all of the goals outlined earlier.

In what we see as the best solution to this difficulty, today we are proposing that the individual-protection standard consist of two parts, which will apply over different time frames. One part of the standard, which will apply over the initial 10,000 years after disposal, consists of the 15 mrem/yr individual-protection standard promulgated in 2001 as 40 CFR 197.20. The other part other part of the standard, which is being proposed today, will apply beyond 10,000 years to the time of peak dose up to a limit of 1 million years. We believe this approach appropriately recognizes the relative manageability of uncertainties at such disparate times, and the resulting level of confidence that can be derived from performance projections.

There is no disagreement internationally that quantitative projections are the most direct means of evaluating disposal system performance, or that comparison of such projections with an acceptable level of performance is a straightforward and transparent method of assessing disposal system safety. However, there is also a general consensus that reliance on quantitative projections to determine safety may be misleading and incomplete, becoming more so at times very far into the future. IAEA notes that ''[q]uantitative analysis is undertaken, at least over the time period for which regulatory compliance is required, but the results from detailed models of safety assessment are likely to be more uncertain for time periods in the far future'' (DS154, Section 3.48, p. 25, Docket No. OAR–2005–0083–0051). Also, ''an indication that calculated doses could exceed the dose constraint, in some unlikely circumstances, need not necessarily result in the rejection of a safety case * * * In general, when irreducible uncertainties make the results of calculations for the safety assessment less reliable, then comparisons with dose or risk constraints have to be treated with caution'' (DS154, Sections A.7, A.8, pp. 36–37, Docket No. OAR–2005–0083–0051). As suggested by the discussion of reasonable expectation in Section II.A.4, at longer time periods, the quantitative projections should be considered less for their strict numerical outcomes and more as one component in a qualitative evaluation of the overall safety case.

In their book ''Principles and Standards for the Disposal of Long-Lived Radioactive Wastes'' (2003, Docket No. OAR–2005–0083–0061), Chapman and McCombie state that ''[a]n approach commonly used is to calculate releases, doses or risks out to peak consequences—but to use different approaches to judging acceptability in different time frames. At far future times (>10 ka) [>10,000 years] * * * calculated doses may then be more appropriately compared with less stringent limits than the typical limits at shorter times'' (p. 79). They also present the concept of ''time-graded containment objectives'' in which the first 1,000 years or so is characterized by ''total containment of all activity in the repository.'' For the ''next one (or a few) hundred thousand years * * * doses * * * are below the range of natural background radiation.'' Finally, ''after this time * * * there is no further containment objective: doses may be envisaged in the range of those from natural background radiation.'' (p. 114)

Different countries have approached this situation in various ways, and many national regulations are still evolving. For example, as summarized by Chapman and McCombie in Table 5.1 (Docket No. OAR–2005–0083–0061): Canada at one time limited quantitative compliance to 10,000 years, to be followed by qualitative evaluation, with special attention to the rate of increase in projected risk; Germany takes a similar approach in official guidance, but does not specify a time frame in regulation; France requires quantitative compliance for 100,000 years, with the situation becoming ''hypothetical'' afterward; Switzerland requires numerical compliance at all times. The Swedish draft guidance referred to in Section II.A.5 states that ''[f]or long periods of time, thousands of years and even longer, the risk analysis should be successively regarded as an illustration of the protective capability of the repository assuming certain conditions'' (p. 7, Docket No. OAR–2005–0083–0048). We believe the approach proposed today, outlined in the paragraphs below, is consistent with that trend.

First, we are retaining the standard promulgated in 2001 as § 197.20, which requires that DOE demonstrate a reasonable expectation that the RMEI will not incur annual exposures greater than 150 μSv (15 mrem) (expressed as a committed effective dose equivalent) from releases of radionuclides from the Yucca Mountain disposal system for 10,000 years after disposal. DOE will make this demonstration using the arithmetic mean of performance

assessment results (see Section II.C.5, ''How Will NRC Judge Compliance?'' for further discussion of the mean). We believe this is appropriate, protective, and will maintain consistency with our generic standards (now applied to the WIPP) and other precedents described earlier. Further, NAS stated that the ''range [of 10^{-5} to 10^{-6} per year for risk] could therefore be used as a reasonable *starting point* for EPA's rulemaking'' (NAS Report p. 49, emphasis in original). By maintaining the 15 mrem/yr standard for 10,000 years we clearly establish a ''starting point'' for assessing compliance that is consistent with both NAS and our overall risk management policies, and serves as a logical foundation for us to incorporate concerns regarding far future projections.

Because of the emphasis on peak dose as the key benchmark of safety in both the NAS Report and the Court decision, some commenters may question not only the need for a standard at such relatively short times, but also whether it is legally permissible, given the Court's decision. We believe there is ample justification for a separate 10,000-year standard on both counts. Taking the legal questions first, there was no legal challenge and the Court made no ruling on the protectiveness of our standard up to 10,000 years. Further, the Court ruled that we must address peak dose, but did not state, and we do not believe intended, that we could not have additional measures to bolster the overall protectiveness of the standard. As the Court noted, the EnPA requires that EPA ''establish a set of health and safety standards, at least one of which must include an EDE-based, individual protection standard'' (*NEI*, 373 F.3d at 45, Docket No. OAR–2005–0083–0080), but does not restrict us from issuing additional standards. Thus, as long as we issue ''at least one'' standard addressing the NAS recommendation regarding peak dose, we are not precluded from issuing other, complementary, standards to apply for a different compliance period. The Court's concern was whether we had been inconsistent with the NAS recommendation by not extending the period of compliance to times longer than 10,000 years. NAS itself did not address the idea of having separate standards to apply over different time periods. We believe such a decision falls well within our policy discretion and in that context the 10,000-year standard is analogous to our ground-water protection standards.

An important reason for retaining a standard applicable for the first 10,000 years is to address the possibility, however unlikely, that significant doses could occur within 10,000 years, even if the peak dose occurs significantly later, as DOE currently projects.

Examination of DOE's Total System Performance Assessments (TSPA) for the site shows that the time of peak dose occurs in the hundreds of thousands of years (FEIS, DOE/EIS–0250, Appendix I, Section 5.3, February 2002, Docket No. OAR–2005–0083–0086). The waste packages assessed in the TSPA are heavily engineered to provide corrosion resistance under the conditions expected in the repository, and are projected to remain essentially unbreached for periods well beyond 10,000 years. The scientific data that underlie these corrosion resistance projections are laboratory tests on the metals, under conditions intended to stress the metals and simulate their performance in the repository. These testing methods are typical ''state-of-the-art'' techniques for corrosion testing. However, it must be recognized that the extrapolation of laboratory test results in a predictive sense involves significant uncertainties, and our experience in verifying such projections is only for time frames of decades in the case of industrial applications (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Section 5, July 2005, Docket No. OAR–2005–0083–0085). While DOE projects, based upon the results of laboratory testing, that the waste containers will maintain their integrity for thousands to tens of thousands of years, it is not possible to claim unequivocally that no information will come to light that might cause a reassessment of the containers' behavior and its effect on disposal system performance. Although we believe that significant doses within 10,000 years are highly unlikely, we also believe it important to structure our regulations to preclude the chance that protection at Yucca Mountain would be less than that provided for WIPP or the Greater Confinement Disposal facility (GCD, which is a group of 120-feet deep boreholes, located within NTS, which contain disposed transuranic wastes). It would be inappropriate to apply a standard designed to accommodate the uncertainties in projections many tens to hundreds of thousands of years into the future to projections within 10,000 years, when uncertainties are much more manageable. The 15 mrem/yr dose limit is the measure against which compliance would be judged during the initial 10,000-year period.

In today's action, we are proposing to add a standard of compliance that would apply at the time of peak dose, if DOE determines that the peak occurs at any time beyond 10,000 years but within 1 million years (as recommended by NAS). Specifically, in addition to retaining the 15 mrem/yr standard applicable up to 10,000 years, we are proposing to establish a separate numerical compliance standard against which the median of peak dose projections would be compared (see Section II.C.3 for a discussion of the proposed dose limit and Section II.C.5 for a discussion of the arithmetic mean and median). As discussed earlier, we recognize that there is strong consensus in the international radioactive waste community that dose projections extending for periods into the many tens to hundreds of thousands of years can best be viewed as qualitative indicators of disposal system performance, rather than as firm predictions that can be compared against strict numerical criteria. The primary concern, which we have also expressed, is managing the uncertainties that become more prominent at longer time frames.

Nevertheless, we believe that the best way to address the Court decision is to establish a numerical compliance standard for the time of peak dose so that a clear test for compliance decision-making can be applied to the results of quantitative performance assessments. What we are proposing is unprecedented in our national regulatory schemes, and we remain greatly concerned about the ability of the implementing agencies to manage the uncertainties in very long-term projections in order to make comparisons with a numerical standard meaningful. We discuss elsewhere in this document (see Sections II.B and II.D.2, for example) ways in which NRC and DOE might temper the effects of uncertainty in dose projections, e.g., through the selection of parameter distributions or scenarios.

Some readers may note that we rejected similar approaches offered in comments on our 1999 proposed rule. One commenter in particular suggested that the dose standard could be increased over time, i.e., 15 mrem/yr up to 10,000 years, 150 mrem/yr from 10,000 to 100,000 years, and 1.5 rem/yr from 100,000 to 1 million years (Docket A–95–12, Item IV–D–35). As stated in our Response to Comments document published in conjunction with the 2001 final rulemaking (p. 3–8, Docket No. OAR–2005–0083–0043), we considered that our approach accomplished the same goal as that offered by the commenter. While we did state that ''no regulatory body that we are aware of considers doses of 150 mrem to be acceptable,'' we also stated that ''the

uncertainties involved in very long-term assessments would make it more difficult to judge compliance with any numerical standard,'' which we still believe is true. It is clear that we struggled to reconcile the competing claims of confidence in projections and intergenerational equity. We sought an approach that would account for what we see as potentially unmanageable uncertainties, but did not depart from levels of risk that are considered protective today. Nevertheless, the Court's decision puts us in the position of establishing a quantitative standard at the time of peak dose. It is necessary for us to re-evaluate potential approaches to doing so, including whether and under what conditions a higher dose standard can be justified. We discuss an approach similar to that offered by the commenter in Section II.C.2.c (''Peak Dose Standard Varying Over Time'').

We are not requesting comment on the 15 mrem/yr standard or its applicability for the initial 10,000-year period. The public record reflects an exhaustive level of comment and consideration on these points (see our 1999 proposed and 2001 final rulemakings, as well as Sections 3 and 4 of the 2001 Response to Comments Document (Docket Nos. OAR–2005–0083–0041, 0042, 0043, respectively). The Court did not question the scientific basis of the 15 mrem/yr dose standard, the protective nature of that limit, or its well-established precedents in regulation for periods as long as 10,000 years (including its implementation at WIPP and GCD), nor indeed were any of these aspects of the rule challenged. Further, as noted above, the Court did not rule that the 10,000-year compliance period had no value, only that it was not by itself consistent with the NAS recommendation (''We will thus vacate part 197 to the extent that it requires DOE to show compliance for only 10,000 years following disposal,'' NEI, 373 F.3d at 31, Docket No. OAR–2005–0083–0080).

We are requesting comment on the combination of the 15 mrem/yr standard with a separate standard applicable beyond 10,000 years through the period of geologic stability. We believe we have provided a rational basis for taking this approach and that it is consistent with the Court's position that we could have ''taken the Academy's recommendations into account and then tailored a standard that accommodated the agency's policy concerns.'' *NEI*, 373 F.3d at 26, Docket No. OAR–2005–0083–0080.

2. What Other Options Did EPA Consider?

We considered a number of other approaches to respond to the Court's decision, each of which had attractive qualities, as well as disadvantages. These disadvantages generally relate to the difficulty of implementation given the increasing complexity and uncertainty of much longer-term projections.

a. Maintain the 10,000-Year Standard Alone Without Addressing Peak Dose

The Court suggested that, ''[h]ad EPA begun with the NAS recommendation to base the compliance period on peak dosage and then made adjustments to accommodate policy considerations not considered by NAS,'' the 40 CFR part 197 standards issued in 2001 might have been accorded more deference. *NEI*, 373 F.3d at 31, Docket No. OAR–2005–0083–0080. However, it is not clear how EPA's earlier explanation of its policy concerns might be reconciled with NAS's technical recommendation. In view of this, we believe that the most direct and responsive action to address the Court ruling is to revise our standards to include consideration of the time when peak dose occurs. Therefore, although we are retaining the previous 10,000-year provisions as one component of our revised standards, we are also proposing an additional measure to address the time of peak exposure within the period of geologic stability beyond 10,000 years. We believe that this approach, coupled with the selection of the dose standard to apply at the time of peak dose (see Section II.C.3) and specification of certain aspects of DOE's performance assessment (see Section II.D), will adequately address our policy concerns.

b. Dose Standard To Apply at Peak Dose Alone

The second option we considered is simply to replace the 10,000-year standard with one that applies at the time of peak dose, whenever it might occur. This approach is attractive primarily because it would be straightforward in responding to the Court decision. Although we believe that 10,000 years has value as a precedent for safety assessments, and are retaining that element of the standards, it is not intrinsically significant as a demarcation point for addressing a peak dose standard beyond 10,000 years. A peak dose standard alone (i.e., not in conjunction with the 10,000-year standard we are retaining) would remove confusion on that point, but introduces additional difficulties, as described in the following sections.

As discussed in Section II.C.4.a, we do not believe it is reasonable or justifiable simply to extend the application of a 15 mrem/year dose limit over the entire period up to the time of peak dose. Rather, at the time of peak dose, which could potentially occur hundreds of thousands of years into the future, we believe rising uncertainties justify adopting a different (higher) dose level. However, as discussed in Section II.C.3, this approach, while more cognizant of the effect of uncertainties and the dangers of relying on specific numerical indicators at very long times, departs from our previous standards of protectiveness in the event that peak doses occur within relatively short time periods. Specifically, if peak doses occur within 10,000 years, we would be in the position of measuring safety against a dose level that we have explicitly rejected as not sufficiently protective over that time frame, both in our generic standards and in our earlier Yucca Mountain rulemaking. Further, there would be a clear contrast between the level of protection offered to the population in the vicinity of the WIPP and that offered the population affected by Yucca Mountain. We recognize that our insistence on maintaining a 15 mrem/yr standard over the initial 10,000 years might appear inconsistent with our proposal, which could allow peak doses shortly after 10,000 years at levels well above 15 mrem. However, as discussed previously, we believe NRC has the authority, as part of its licensing process, to consider the timing and magnitude of peak dose in assessing the safety of Yucca Mountain. Furthermore, we do not believe it is prudent to disregard the usefulness of a stringent 10,000-year measure simply because uncertainties at longer time frames make it infeasible to conduct a performance assessment with the same level of rigor. Our view on this point is discussed in Section II.A.1.

c. Peak Dose Standard Varying Over Time

We also considered a variation on our proposed approach, in which the post-10,000-year dose level would rise incrementally as time and the effects of uncertainty increase. This approach would provide greater continuity with the 10,000-year standard and a gradual transition as the role of uncertainty increases. The difficulty in this approach is identifying criteria to define the timing and level of these transitions, which would have to incorporate some appraisal and comparison of the effects

of uncertainty at various times. Some of the advantages of this approach are also captured by the statistical approach discussed in Section II.C.2.e. We have not identified a defensible way to derive transition levels or the times at which these dose level changes could be made.

d. Standard Expressed as a Dose Target, Rather Than Limit

Although we have chosen to add a standard extending the compliance period beyond 10,000 years, we believe that the most problematic aspect of doing so is the uncertainty involved in making projections over such long time frames, which we discussed in some detail in our proposed and final rulemakings for 40 CFR part 197 in 1999 and 2001, respectively (Docket Nos. OAR–2005–0083–0041 and 0042). To repeat, we are in agreement with NAS that such projections can be performed and even ''bounded'' to some extent. However, we remain concerned about whether and under what conditions results of very long-term assessments can have sufficient meaning to provide the basis for a licensing decision that the repository should or should not be approved.

One way to take these uncertainties into account is to establish a more flexible compliance benchmark for very long time periods, one that would represent a more qualitative ''target'' for dose assessments rather than a strict numerical limit. This approach would be generally consistent with several international programs. For example, the Swedish Radiation Protection Authority (SSI) has proposed draft guidance for the disposal of SNF, stating that ''[f]or very long periods * * * [t]he intention should be to shed light on the protective capability of the repository and to provide a qualitative picture of the risks'' (p. 7, Docket No. OAR–2005–0083–0048). The Swedish regulations themselves are not detailed regarding the way different time periods should be addressed, although it is clear that times beyond 1,000 years are seen differently than the period up to 1,000 years. For the first thousand years after closure, ''the assessment of the repository's protective capability shall be based on quantitative analyses of the impact on human health and the environment,'' but for longer periods that assessment ''shall be based on various possible sequences for the development of the repository's properties, its environment and the biosphere'' (Sections 11 and 12, respectively, Docket No. OAR–2005–0083–0047).

In some cases, this reasoning is also applied to near-surface disposal facilities involving much shorter time frames. For example, in the United Kingdom, ''[t]he Government therefore considers it inappropriate to rely on a specified risk limit or risk constraint as an acceptance criterion for a disposal facility after control is withdrawn. It is, however, considered appropriate to apply a risk target in the design process. However, if the estimated risk is above the target, the Agency will need to be satisfied not only that an appropriate level of safety is assured, but also that any further improvements in safety could be achieved only at disproportionate cost * * * In the very long term, irreducible uncertainties about the geological, climatic and resulting geomorphological changes that may occur at a site provide a natural limit to the timescale over which it is sensible to attempt to make detailed calculations of disposal system performance. Simpler scoping calculations and qualitative information may be required to indicate the continuing safety of the facility at longer times'' (UK Environment Agencies, ''Disposal Facilities on Land for Low and Intermediate Level Radioactive Waste: Guidance on Requirements for Authorisation,'' sections 6.14 and 8.23, Docket No. OAR–2005–0083–0063). Thus, in the UK approach, estimated risks may be allowed to exceed the numerical target if it is determined that further restrictions in risk are impossible or impractical.

Our approach in the 2001 rulemaking, which required peak dose projections to be placed in the Environmental Impact Statement, was based on similar reasoning. It allowed NRC to evaluate those results qualitatively, but did not prescribe that they be compared against a dose limit. We also believe such an approach would be consistent with our ''reasonable expectation'' standard, which intends to avoid a narrow focus on numerical calculations and encourages consideration of the totality of the assessment in the context of the overall safety case (ICRP took the same view in its Publication 81, ''Radiation Protection Recommendations as Applied to the Disposal of Long-Lived Solid Radioactive Waste,'' stating that ''as the time frame increases, some allowance should be made for assessed dose or risk exceeding the dose or risk constraint. This must not be misinterpreted as a reduction in the protection of future generations and, hence, a contradiction with the principle of equity of protection, but rather as an adequate consideration of the uncertainties associated with the calculated results'' (Docket No. OAR–2005–0083–0087); similarly, IAEA states ''that calculated doses are less than the dose constraint is not in itself sufficient for acceptance of a safety case * * * Conversely, an indication that calculated doses could exceed the dose constraint * * * need not necessarily result in the rejection of a safety case,'' DS154, Section A.7, pp. 36–37, Docket No. OAR–2005–0083–0051). In considering how to address peak dose in this standard, however, we believe it is more implementable and will be viewed as more rigorous to set a specific dose limit and provide direction concerning assumptions and methodologies for peak dose calculations, and leave it to NRC to consider the quantitative projections of peak dose as a particularly important part of the ''full record before it'' that it will consider in determining whether there is a reasonable expectation that the dose limit will be achieved.

e. Standard Expressed as a Statistical Distribution

Finally, we considered a standard of compliance that would combine features of the qualitative and quantitative approaches described earlier. Rather than incorporating a specific numerical limit that must be met by a single compliance measure (such as the median or arithmetic mean of a distribution), this approach would be based upon the characteristics of the distribution itself. It would take into account the range of results for performance assessment by examining multiple representative dose estimates such as upper and lower percentile values. Under this formulation, DOE might have to show that some percentage of the peak dose projections would remain within a certain range of a reference dose level. For example, this standard might say that at least 10% of peak annual dose results must be 15 mrem or lower, and that no more than 10% of results can exceed some upper limit. Using these parameters and assuming that DOE ran 100 assessments of system performance using probabilistically-sampled input parameter values, each resulting in a separately calculated ''peak'' dose, at least ten of those results would have to be 15 mrem or lower and no more than ten could be above the ''upper limit''.

This approach seems to address some of our concerns. First, it recognizes growing uncertainties but constrains how much is acceptable by specifying characteristics of the distribution that must apply at all times without being overly affected by ''outliers.'' In fact, the value of the projected peak dose is considered only in determining where it falls in relation to the designated upper

and lower percentile measures. In this example, no more than 10% of the results may exceed the ''upper limit'', but the amount by which they exceed that limit is not taken into account (and similarly for doses below 15 mrem/yr). Thus, projected doses of 1 rem/yr (1,000 mrem/yr) would carry the same significance as much lower projected doses, as long as both were higher than the ''upper limit''. As a result, this approach might provide additional flexibility in judging the level of conservatism appropriate to addressing uncertainties (and perhaps compensate for conservatism) across a range of scenarios because the results would not be disproportionately affected by low-probability scenarios resulting in very high doses, as the arithmetic mean would be. In addition, the lower dose threshold acts as a conservative performance requirement in that it requires that the disposal system provide a specified level of performance tied to the 15 mrem/yr dose standard applicable to performance up to 10,000 years.

A firm base of assessments at lower levels (*e.g.*, 15 mrem/yr) would tie DOE's results to, and provide continuity with, the 10,000-year projections. It could be reasonable to allow a small number of results to exceed the ''upper limit,'' so long as the ''expected'' performance remains within a given range (within about an order of magnitude of 15 mrem, if we were to use as the ''upper limit'' the value of 350 mrem/yr we are proposing today). It should be kept in mind that even using the mean of the distribution as the compliance measure allows for a percentage of results to exceed the limit, depending to some extent on how the distribution is skewed; this statistical approach offered for discussion is simply more precise in specifying the percentage.

Second, while accounting for uncertainties, it can be linked to the standards of safety established for geologic repositories at earlier time frames. Percentile curves could be compared against reference levels based upon well-established limits within the U.S. and internationally, such as 15 mrem/yr, 25 mrem/yr, 30 mrem/yr, or 100 mrem/yr, or the 350 mrem/yr we are proposing today. This could provide continuity with our approach at 10,000 years. It is reasonable to assume that uncertainties will tend to become less manageable as time increases, but there is no clear and predictable demarcation for when uncertainties become ''unmanageable.''

Third, this approach would be consistent with our ''reasonable expectation'' standard, which is intended to encourage DOE to focus on ''cautious, but reasonable'' scenarios and examine the full range of results to obtain the best possible understanding of the long-term behavior of the disposal system. In applying a standard that must address times from 10,000 years up to 1 million years, it might be more representative of system behavior to consider the entire distribution of results that may occur over those times than to focus on a single number as indicative of acceptable performance. Using this approach, NRC would be assured that the bulk of the results will fall within reasonable limits, may be better able to understand why results fall at certain points along the continuum, and would have additional flexibility to determine compliance within those limits.

We used a somewhat similar approach in developing the containment requirements in 40 CFR 191.13(a). In that section of our generic regulations, we required that calculations show that a disposal system have no more than one chance in ten of exceeding the release limits, and no more than one chance in 1,000 of exceeding ten times the release limits. In establishing those requirements, we explained that the release limits applied to ''those processes that are expected to occur as well as relatively likely disruptions.'' The release limits multiplied by ten applied to ''more likely natural disruptive events * * * [and the] range of probabilities was selected to include the anticipated uncertainties in predicting the likelihood of these natural phenomena. Greater releases are allowed for these circumstances because they are so unlikely to occur.'' In part 191, no release limits were applied to even lower-probability (*i.e.*, ''very unlikely'') events, analogous to our approach of screening out very unlikely events at Yucca Mountain: ''the Agency believes there is no benefit to public health or the environment from trying to regulate the consequences of such very unlikely events' (50 FR 38071, September 19, 1985, Docket No. OAR–2005–0083–0064). We have successfully implemented this regulation at WIPP.

While we see several potential positive aspects of this statistical approach, we also have concerns regarding both the overall approach and the ways in which it could give a misleading impression of disposal system performance in a compliance demonstration. First, there is a difficulty in defining exactly where percentile limits should be placed and how they should be justified. Second, while the criteria we have suggested would apply to the entire distribution of results, they would essentially give the ''tails'' of the distribution a strong role in determining whether the disposal system should be licensed. As we discuss later in Section II.C.5 (''How Will NRC Judge Compliance?''), we believe it is appropriate to consider an indicator of the ''central tendency'' of the results as demonstrative of performance.

Our second concern relates to the idea that the calculated peak dose values themselves are not explicitly incorporated into the compliance determination through calculation of a separate statistical measure, such as the mean. While this offers an advantage insofar as the overall measure is not overly influenced by very high results, for any defined set of cut-offs there is always the possibility that the distribution will fall just outside the acceptable criteria. While strictly speaking only the number of doses above the higher cut-off level enters into the compliance demonstration, the magnitude of those doses would also be important in the regulator's confidence in the overall acceptability of the disposal system. Similarly, a distribution that falls just outside the cut-offs could be judged ''better'' than a distribution that meets the criteria, if a different measure such as the mean or median were used for comparison. In considering a series of 100 realizations, for example, a distribution with 11 above, but only slightly above, the ''upper limit'' and only nine at 15 mrem/yr or lower (but with the next highest at only 16 mrem) would fail the test, even if the bulk of the results were relatively low (say, below 100 mrem). However, a distribution with ten realizations significantly higher than the ''upper limit'' (*e.g.*, 500 mrem/yr and higher), ten at 15 mrem/yr, and most of the remaining doses well above 100 mrem/yr, would pass the test, even though it is likely that the arithmetic mean would be noticeably higher in the second case. Such a disparity might also indicate the presence of high-dose scenarios in one distribution that were not included in the other.

Therefore, we have chosen not to propose this approach for Yucca Mountain. We are concerned that it will be less transparent to the public and not give a clear indication of the necessary level of performance. Further, upper and lower percentiles and dose limits must be selected, as in the example above; the selection of all these values would need to account for risk management and policy considerations. It is difficult to identify a specific set of criteria that would lead to the selection of one set of values over another.

3. What Dose Level is EPA Proposing for Peak Dose?

Having determined that it would be appropriate to propose a numerical peak dose standard for the period of geologic stability beyond 10,000 years, we must then determine the appropriate level for that standard. We considered several factors in selecting the level proposed today. First, and most significant, is the issue of uncertainty in long-term projections. Uncertainties are problematic not only because they are challenging to quantify, but also because their impact will differ depending on initial assumptions and the time at which peak dose is projected to occur. Further, the natural tendency in modeling long-term processes is to introduce additional conservatisms to help ensure that actual performance will be no worse than projected performance. Thus, excessive conservatism in addressing uncertainty drives assessments away from ''cautious, but reasonable'' assumptions and may result in an unrealistic, overly pessimistic view of disposal system performance. As we stated in our earlier rulemaking, ''[s]etting a strict numerical standard at a level of risk acceptable today would ignore this cumulative uncertainty and the extreme difficulty of using highly uncertain assessment results to determine compliance with that standard'' (66 FR 32098, June 13, 2001, Docket No. OAR–2005–0083–0042).

This raises a broader point regarding the significance of very-long term projections and how they should be considered in the context of repository safety. Leaving aside the uncertainties inherent in projecting geologic characteristics over such periods, even a well-characterized site will display natural variability in the parameters that influence radionuclide transport. This natural variability exists at every possible site and can be reduced (or at least better estimated) by site characterization, but can never be eliminated, no matter how stable the site. As assessments extend to longer time periods, this natural variability will lead to an increasing spread of results even if conditions do not change significantly (it may be useful again for the reader to refer to the hurricane analogy discussed in Section II.A.5, where the range of possible storm paths increases as forecasts look farther ahead in time). Therefore, given the difference in the level of confidence regarding the ''real'' performance of the disposal system for projections at 250,000 years as at 10,000 years, we believe that emphasizing incremental dose increases when such increases are overwhelmed by fundamental uncertainties inappropriately takes attention away from an evaluation of the overall safety of the disposal system and its ability to contain and isolate wastes or respond to disturbances. On that point, we have argued against viewing projections as ''predictions'' of disposal system performance and have emphasized that assessments should aim to provide a ''reasonable expectation'' that performance will be within acceptable limits (on this point, see the NAS Report, for example p. 71: ''The results of compliance analysis should not, however, be interpreted as accurate predictions of the expected behavior of a geologic repository''). While there is a body of experience in applying the ''reasonable expectation'' concept for 10,000 years, we are also considering its implications for time periods in the hundreds of thousands of years (see Section II.B, ''How Does the Application of ''Reasonable Expectation'' Influence Today's Proposal?'').

We have also considered the potential impacts to future generations that would be represented by a dose standard applied to periods up to 1 million years. Impacts on future generations could come in the form of economic cost, health impacts, or a reduction in the options available to make decisions to address the problems faced by those generations. A number of regulatory and scientific bodies suggest that it is appropriate to relate longer-term standards to background radiation levels. NEA, for example, suggests that consideration of future generations ''implies that the safety implications of a repository need to be assessed for as long as the waste presents a hazard'' but that such assessments need not focus on exposures: ''In view of the way in which uncertainties generally increase with time, or simply for practical reasons, some cut-off time is inevitably applied to calculations of dose or risk. There is, however, generally no cut-off time for the period to be addressed in some way in safety assessment, which is seen as a wider activity involving the development of a range of arguments for safety'' (''The Handling of Timescales in Assessing Post-Closure Safety,'' p. 39, 2004, Docket No. OAR–2005–0083–0046, emphasis in original). This reasoning supports the idea that dose projections should be given progressively less weight in the overall decision as time passes. We note that ICRP recently discussed a similar concept. Specifically, ICRP suggests that future projected doses can be weighted to take into account a variety of factors, and that ''[w]eights can also be assigned according to the time at which the exposure will occur'' (''The Optimisation of Radiological Protection,'' draft for consultation, p. 29, April 2005, Docket No. OAR–2005–0083–0052). Such an approach could involve giving doses in the far future less weight, either in a numeric sense or in the context of the overall safety case.

The National Academy of Public Administration (NAPA), in its 1997 report ''Deciding for the Future: Balancing Risks, Costs, and Benefits Fairly Across Generations'' (Docket No. OAR–2005–0083–0087), recognizes that each generation must consider not only how its actions will affect future generations, but also the extent to which inaction will compromise its own interests and negatively affect those same future generations.

To inform decision-making, NAPA defined four basic principles:

- Trustee: Every generation has obligations as trustee to protect the interests of future generations;
- Sustainability: No generation should deprive future generations of the opportunity for a quality of life comparable to its own;
- Chain of Obligation: Each generation's primary obligation is to provide for the needs of the living and succeeding generations. Near-term concrete hazards have priority over long-term hypothetical hazards;
- Precautionary: Actions that pose a realistic threat of irreversible harm or catastrophic consequences should not be pursued unless there is some countervailing need to benefit either current or future generations.

Under NAPA's approach, there is no absolute freedom of succeeding generations to escape the effect of the preceding generations' decisions. Rather, it is the responsibility of each generation to consider those decisions and their consequences in the light of new knowledge, technology, societal attitudes, and economic or other factors. NAPA terms this the ''rolling present.'' As it relates to the management of spent nuclear fuel, there is no question that the next several generations may incur societal as well as economic costs, whether it involves continued development of the Yucca Mountain repository, development of interim storage facilities or expanded storage at reactor sites, or decisions regarding the future use of nuclear power. Application of the NAPA principles would lead each generation to an approach that would best address the problem without unduly limiting the options available to succeeding generations to modify that approach or

to take other actions to address their needs.

In general, while there is wide agreement that future generations should not be unduly compromised by the decisions of the current generation, there is no clear consensus regarding the extent of the claims held by future generations on the current generation (*i.e.*, how many generations should be considered, how to compare their interests to those of the current generation, or what it means to ''compromise'' their ability to take action). The Swedish National Council for Nuclear Waste (KASAM) concludes that increasing uncertainties ''means that our capacity to assume responsibilities changes with time. In other words, our moral responsibility diminishes on a sliding scale over the course of time'' (Nuclear Waste State-of-the-Art Reports 1998, p. 27, Docket No. OAR–2005–0083–0056). KASAM suggests that for the next 5 or 6 generations (roughly 150 years), we can apply a ''Strong Principle of Justice'' so that these generations can be expected to achieve a quality of life equivalent to that of the current generation. For a further 5 or 6 generations, we may only be able to apply a ''Weak Principle of Justice'' to ensure that these generations can at least satisfy their basic needs. Beyond that point, the best we can do is conduct ourselves today so as not to jeopardize future generations' possibilities for life (the ''Minimal Principle of Justice''). In the case of spent fuel disposal, these considerations lead to the idea that a repository must provide reasonable protection and security for the very far future, but this may not necessarily be at levels deemed protective (and controllable) for the current or succeeding generations.[2]

In any case, it is clear that quantitative regulatory limits cannot be applied indefinitely. There is general agreement that assessments (and corresponding regulatory safety limits or reference points) for periods longer than 1 million years are of limited value in any case (*e.g.*, IAEA states that ''little credibility can be attached to assessments beyond 10^6 years. Even qualitative assessments will contribute little to the decision making process'' (''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' IAEA–TECDOC–767, p. 19, 1994, Docket No. OAR–2005–0083–0044), and Sweden's draft guidance states that ''[n]o account need be given for periods beyond a million years after closure, even if'' peak exposures would be expected after that time (p. 7, Docket OAR–2005–0083–0048).

In addition to examining international guidance and precedents, we also reviewed the NAS's statements on the subject. As discussed in detail later in this section, NAS refrained from recommending any specific dose or risk limit for regulations, but instead suggested a range of risks as a ''starting point'' for EPA's consideration. Further, while NAS stated that a standard that ''could * * * apply uniformly over time and generations * * * would be consistent with the principle of intergenerational equity,'' it also recognized that other approaches are possible: ''Whether to adopt this or some other expression of the principle of intergenerational equity is a matter for social judgment'' (NAS Report pp. 56–57).

In determining an appropriate level of protection for periods up to 1 million years, we believe it is appropriate to consider potential exposures from the Yucca Mountain disposal system in the context of exposures incurred by residents of other areas of the United States from natural sources. Specifically, we believe it is reasonable to set a standard that would represent a level of incremental radiation exposure such that the total annual exposure of the RMEI could be comparable to the total natural radiation exposures incurred now by current residents of well-populated areas. Given the large uncertainties surrounding the outcomes at these unprecedented time frames, we believe such an action is justifiable and protective. Using this approach, we are proposing to establish a standard of 350 mrem (3.5 mSv) per year, which will limit total radiation exposures of the RMEI to levels comparable to those incurred today from natural sources by residents of a nearby western State.

We believe this level of protection appropriately blends the concerns outlined above with current and historical thinking regarding the acceptability of risks associated with background radiation, while recognizing the conceptual difficulties inherent in regulating at times potentially hundreds of thousands of years into the future. NAS recognized that the level of protection was a matter best left to EPA to establish through rulemaking: ''We do not directly recommend a level of acceptable risk'' (NAS Report p. 49). Thus, the NAS Report does not bind us to apply any particular dose limit in our Yucca Mountain standards.

We note that a number of international scientific and regulatory bodies and programs suggest natural sources of radioactivity serve as a point of comparison when uncertainties become significant. For example, the IAEA has stated that, for time frames extending from about 10,000 to 1 million years, ''it may be appropriate to use quantitative and qualitative assessments based on comparisons with natural radioactivity and naturally occurring toxic substances'' (''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' IAEA–TECDOC–767, p. 19, 1994, Docket No. OAR–2005–0083–0044). IAEA also suggests that ''[i]n very long time frames * * * uncertainties could become much larger and calculated doses may exceed the dose constraint. Comparison of the doses with doses from naturally occurring radionuclides may provide a useful indication of the significance of such cases'' (''Geological Disposal of Radioactive Waste,'' DS154, Section A.7, p. 37, April 2005, Docket No. OAR–2005–0083–0051). Similarly, in summarizing the results of a workshop to assess long-term assessments, the NEA suggests that at time frames when the ''system [is] responding to external change,'' a key performance indicator could be ''comparison with background radiation levels.'' At that workshop, the idea was presented that up to 100,000 years, ''a dose constraint derived from natural background levels is prescribed'' and beyond that point ''the eventual redistribution of the residual activity by natural processes remains indistinguishable from natural regional variations in radiation levels'' (''The

[2] This sentiment, however, is not universal. Chapman and McCombie point out that the Swiss radiation protection regulations make the argument ''that since the current generation is the beneficiary of nuclear power future doses should be less'' (p. 53). They then acknowledge, however, that such arguments are complex, noting that ''it has been pointed out that future generations do indeed benefit from nuclear technology through the technical advances made, the conservation of fossil reserves, the reduction in greenhouse gases, etc.'' Further, they go on to write:

In addition, the inability to guarantee long-term or effectively permanent institutional control over long-lived uranium mining wastes disposed of at the earth's surface or over historical ''legacy wastes'' in countries where defence programmes have resulted in large-scale contamination, means that we are implicitly accepting (for this type of waste, and some NORM wastes) that future generations may have lower levels of protection than today. This is causing re-examination of the appropriate balance of radiological protection standards for the future for these materials. The most commonly accepted principle today for disposal of nuclear fuel cycle wastes is that future generations must be protected for very long times (at least 10,000 years) to at least reach the level of protection expected by today's generations; for extremely long times the growing tendency is to then make comparisons with natural sources of radiation, such as ore bodies.

''Principles and Standards for the Disposal of Long-Lived Radioactive Wastes,'' pp. 53–54, 2003, Docket No. OAR–2005–0083–0061.

Handling of Timescales in Assessing Post-Closure Safety: Lessons Learnt from the April 2002 Workshop in Paris, France,'' pp. 33, 35, 2004, Docket No. OAR–2005–0083–0046). Further, as regards low- and intermediate-level waste disposal, the UK Environment Agencies (consisting of the Environment Agency of England and Wales, the Scottish Environment Protection Agency, and the Department of the Environment for Northern Ireland) state that ''At times longer than those for which the conditions of the engineered and geological barriers can be modelled or reasonably assumed * * * Comparisons with the ambient levels of radioactivity in the environment may also be appropriate'' (''Disposal Facilities on Land for Low and Intermediate Level Radioactive Wastes: Guidance on Requirements for Authorisation,'' section 6.22, 1996, Docket No. OAR–2005–0083–0063).

We therefore considered which natural sources of radioactivity in the United States might provide similar reference points for a dose standard beyond 10,000 years. Natural background radiation in the U.S. averages roughly 300 mrem/yr, but varies significantly across the country, from a low of about 100 mrem/yr in coastal areas to above 1 rem/yr (1,000 mrem/yr) in certain localized regions. For purposes of this discussion, natural background radiation consists of external exposures from cosmic and terrestrial sources, and internal exposures from indoor exposures to naturally-occurring radon. Altitude and geology are two of the primary variables accounting for regional variations; however, there can be tremendous fluctuation even within a city or county, primarily due to variations in radon emissions. These fluctuations introduce some uncertainty in estimates of localized background radiation levels, which are also affected by factors such as the number and distribution of samples within a geographic area, whether the samples are short-term or averaged over a longer period, the structure of the building, the location of the sampling point(s) within a building, and assumptions in translating measured concentrations to estimated doses.

In order to assess total exposures and derive a dose limit, it is necessary to establish levels of natural background radiation already experienced in the vicinity of Yucca Mountain. We selected Amargosa Valley as the point of comparison for this analysis. We believe this is an appropriate approach, as the RMEI is defined as having a lifestyle and diet representative of current residents of Amargosa Valley. It is reasonable to consider total exposures in light of exposures already incurred by people in the immediate vicinity of Yucca Mountain. However, there are varying estimates of exposures from natural background sources in that area. DOE estimates that the natural background in Amargosa Valley is equivalent to the average across the U.S., or 300 mrem/yr (FEIS, DOE/EIS–0250, Table 3–28, Docket No. OAR–2005–0083–0086). However, that overall figure is highly dependent on the radon contribution, which DOE also assumes is equivalent to the average across the U.S., or 200 mrem/yr. Based on EPA radon studies, we believe it is reasonable and somewhat conservative to assume that radon exposures to residents of Amargosa Valley would be slightly higher (say 25%) than the national average (and possibly as much as 100 mrem/yr higher than the statewide average), resulting in a radon contribution to those residents of about 250 mrem/yr. Thus, combined with the cosmic and terrestrial exposures estimated by DOE, we estimate total annual natural background radiation at Amargosa Valley to be approximately 350 mrem/yr.[3]

To make the comparison with total exposures, it is also necessary to consider what total exposures provide a reasonable reference point for limiting releases from Yucca Mountain. As noted above, our goal is to ensure that releases from Yucca Mountain will not cause total exposures to the RMEI to exceed natural background levels with which other populations live routinely. We selected the State of Colorado as the reference point in meeting this goal. We considered several factors in this selection. First, we must recognize that some incremental exposure will be allowed; that is, it is a foregone conclusion that even the most protective standard cannot be expected to reduce natural background exposures, and clearly we cannot establish a negative standard. Thus, the reference point would have to have a higher level of background than does the area near Yucca Mountain. In addition, because of the aforementioned complications in estimating localized background radiation (due primarily to the radon component), we chose to examine statewide averages, which are less uncertain. Of the states with sufficient data, 32 have average background radiation levels higher than Nevada. In selecting among these, we considered characteristics such as geographic location and population. Our preference is to choose a state in the western part of the country that is fairly well-populated and might otherwise have characteristics considered reasonably comparable to Nevada (such as radon potential, surface water/coastal features, or size of major cities). We find that Colorado best fits those criteria. According to the population data (U.S. Census Bureau Statistical Abstract of the United States, July 1, 2004, *http://www.census.gov/statab/ranks/rank01.html*), Colorado ranks 22nd among all states in total population (Nevada is 35th). Colorado's average annual background radiation is estimated at 700 mrem/yr (see ''Assessment of Variations in Radiation Exposure in the United States,'' 2005, Docket No. OAR–2005–0083–0077, for both background radiation and population information). Other states have comparable or higher radon potential and higher background levels with which people live routinely (background levels in North Dakota, South Dakota, and Iowa, for example, are 789 mrem/yr, 963 mrem/yr, and 784 mrem/yr, respectively), and might also be used for comparison. However, we believe Colorado is more representative of the characteristics exhibited by Nevada (and Amargosa Valley).

In view of these factors, we selected Colorado as our point of reference. Thus, comparing Colorado's estimated average annual background radiation of 700 mrem/yr to our estimate for Amargosa Valley, we derive an incremental exposure level of 350 mrem/yr, which we are proposing to establish today as the dose limit to

[3] Data from EPA studies in 1993 indicate that the total average natural background exposure in the State of Nevada is 222 mrem/yr (''Assessment of Variations in Radiation Exposure in the United States,'' 2005, Docket No. OAR–2005–0083–0077), which is roughly 75% of the national average. Because data were not available specifically for Amargosa Valley, we used the statewide average as a starting point to estimate background radiation at Amargosa Valley. The overall statewide average is significantly affected by estimated exposures in Clark County (where Las Vegas is located), and not necessarily representative of exposures closer to Yucca Mountain. Clark County accounts for roughly two-thirds of the state's population (Census Bureau, Nevada State Data Center, *http://dmla.clan.lib.nv.us/docs/nsla/sdc/*). As outlined above, data support the conclusion that average exposures in Clark County would be significantly lower than in the rest of the state, primarily because of indoor radon exposures. EPA's map of radon zones developed in the early 1990s found Clark County to be the only county in Nevada placed into the lowest emission category, in which average exposure potential is less than 200 mrem/yr (''EPA Map of Radon Zones,'' EPA–402–R–93–071, Docket No. OAR–2005–0083–0065). Most of the other counties, including Nye County (where Yucca Mountain and Amargosa Valley are located), fell into the intermediate category, in which average exposure potential is estimated in the range between 200 and 400 mrem/yr.

apply to the time of peak dose beyond 10,000 years.

The limit we are proposing today is somewhat higher than the average natural background level of 300 mrem/yr across the U.S., which places it above two other options we considered (see Sections II.C.4.b and II.C.4.c). One option is the limit of 100 mrem/yr based on international guidance for all sources of exposure except natural, accidental, and medical. The other is 200 mrem/yr, which we derived through a somewhat different way of looking at total background levels nationwide. In our view, the 350 mrem/yr level and these other values are within a range of values for which projections might well be indistinguishable after several hundred thousand years. That is, when taking increasing uncertainties into account in the very long term, the effects of factors that would distinguish projections of 100, 200, and 350 mrem/yr within a 10,000-year time frame are more difficult to identify clearly at very long times, so that such projections may be qualitatively identical to each other and to the level of performance represented by projections of 15 mrem/yr at 10,000 years. That is, modest differences in basic modeling assumptions regarding such factors as temperature inside the repository over the first few hundred years after disposal can lead to differences in projected doses. Such differences reflect uncertainties and changes in models, and should not be interpreted as representing meaningful differences in the level of safety that can be expected to be achieved. Given the difficulty in estimating performance in the very far future, we would also view 350 mrem/yr as representing a satisfactory level of performance should it be the ''true'' value at such long times.

We recognize that a standard based on variations in natural background radiation would be higher than previous non-occupational standards in the U.S. In our 2001 rulemaking, we justified the dose limit of 15 mrem/yr and the 10,000-year compliance period in part because they were consistent with other EPA policies. In particular, a peak dose standard of 350 mrem/yr (and the time frame of up to 1 million years over which that standard could apply) may appear to some to be a departure from the risk-management policies EPA has adopted and applied in a variety of Agency programs, most notably in the Superfund cleanup program. We believe the circumstances involved in today's proposal are significantly different from the situations addressed under Superfund or any other existing U.S. regulatory program, and that it should be clear that comparisons between the two are inappropriate.

It should be clear that we are not arguing that most people take into account levels of background radiation when deciding where to live or work, or that it in any way plays a major role in their decision-making. Rather, in establishing a standard to apply to the RMEI over unprecedented times, we believe it is reasonable to consider exposures incurred routinely today by people in other locations, which in our view do not ''pose a realistic threat of irreversible harm or catastrophic consequences'' to those people.

In that context, we note that EPA does not consider the risks from such exposures to be excessive in the context of radon occurrence in residences. As described earlier, radon exposures can vary widely even in localized areas for a number of reasons. While average radon doses are estimated to be roughly 200 mrem/yr, measurements indicate that some exposures could be more than ten times that level in unique situations. The concentration at which EPA recommends action be taken to mitigate exposures is 4 pCi/l, which translates roughly to 800 mrem/yr. The Agency further recommends that homeowners consider taking action only if the measured concentration is between 2 and 4 pCi/l (*i.e.*, above 400 mrem/yr) (''A Citizen's Guide to Radon: The Guide to Protecting Yourself and Your Family from Radon,'' EPA 402–K–02–006, May 2004, Docket No. OAR–2005–0083–0058). It should be understood that this recommendation is not based solely on risk, but considers factors such as the voluntary nature of the exposure, the application to private property, and the capabilities of mitigation technology. The dose limit proposed today is well below the ''action level'' recommended for radon.

One way to provide context for comparisons with natural radioactivity is to evaluate the radiotoxicity of the waste itself. In particular, it has been suggested that assessment time frames could be tied to the time necessary for the waste to decay to levels roughly comparable to the uranium ore from which the fuel was derived, which is often on the order of several hundred thousand years. For example, IAEA states that ''[r]adiotoxicity indices are useful in putting the potential hazards of radioactive waste disposal into perspective * * * they are qualitative indicators of the time-scales of interest for safety analysis'' (''Safety Indicators in Different Time Frames for the Safety Assessment of Underground Radioactive Waste Repositories,'' TECDOC–767, p. 15, 2004, Docket No. OAR–2005–0083–0044). NEA takes a similar position: ''radiological toxicity and comparison with natural systems such as uranium ores offer a basis for a safety indicator that can usefully complement dose and risk'' (''The Handling of Timescales in Assessing Post-Closure Safety,'' p. 30, 2004, Docket No. OAR–2005–0083–0046). Standards developed in Finland explicitly incorporate this comparison by defining the ''farthest future'' for assessments as the period when the activity in spent fuel becomes less than that in the natural uranium from which the fuel was fabricated (NEA, p. 34, Docket No. OAR–2005–0083–0046). Draft guidance for the Swedish program states that assessments ''need not be extended beyond the point in time when the initial content of the radioactive substances in the repository has decayed to a level at which the potential of causing harmful effects or other environmental consequences has decreased to insignificant levels'' (p. 7, Docket No. OAR–2005–0083–0048). One technical paper presented in the U.S. concludes that ''regardless of the assumptions used, the risk to public health from a HLW or spent fuel waste repository will always become less than that of the original uranium ore deposit'' and that ''[c]onsidering the nature of the many barriers to release that are included in the repository design, [it] should easily be the case'' that this ''crossover time'' (the time at which the radiotoxicity, or overall hazard, of the remaining waste will be equivalent to that of the original ore used to make the fuel) will be less than 10,000 years (''An Assessment of Issues Related to Determination of Time Periods Required for Isolation of High Level Waste,'' Proceedings of the Symposium on Waste Management at Tucson, Arizona, February 26–March 2, 1989, Docket No. OAR–2005–0083–0049).

While it is clear that consideration of natural radioactivity is a widely accepted concept for supporting safety assessments over very long times, it should also be clear that we believe regulatory standards for the Yucca Mountain disposal system based on background exposures can be reconciled with considerations of impacts on future generations, as outlined earlier in this section. Some international statements regarding natural radioactivity reflect the lack of consensus on what constitutes an undue burden. For example, NEA notes that when ''the repository has become comparable to a natural system in certain important aspects, this does not necessarily indicate a return to unconditionally safe

conditions'' (NEA, p. 30, Docket No. OAR–2005–0083–0046).

However, Chapman and McCombie directly address this question, stating that, at these very long times, ''There is no logical or ethical reason for trying to provide more protection than the population already has from Earth's natural radiation environment, in which it lives and evolves * * * it must be recognized that man cannot be expected over infinite times to do much better than nature. The potential exists for natural uranium ore deposits, or spent fuel or HLW repositories, to give rise locally to doses that are higher than the global average for natural radiation, particularly if they are eventually eroded in the near-surface environment. However people exist today in many locations where doses are tens, even up to a hundred times higher than the average. Thus, a repository is not providing, globally, a novel source of exposure and does not at these long times represent any unusual anomaly in the global environment'' (''Principles and Standards for Disposal of Long-Lived Radioactive Wastes,'' pp. 114–115, 2003, Docket No. OAR–2005–0083–0061).

We do not mean to suggest that uranium ore bodies are benign entities, and there is certainly a difference between exposures incurred by direct contact with the material and those incurred at a distance after environmental transport of material has provided some lowering of potential exposures by natural retardation processes. These comparisons are relevant in the sense that exposures from longer-term releases from the Yucca Mountain disposal system would not be expected to be worse than those from natural features that are fairly common in parts of the country. The exposures that might result from ore body releases are highly dependent on the characteristics of the ore body and surrounding environment, as well as the other assumptions applied (measurements of releases from unmined ore bodies are limited; however, some surficial radiation measurements from unmined ore bodies suggest that a person at the site could easily receive several hundred mrem/yr (''The Uranium District of the Texas Gulf Coastal Plain'', U.S. Department of Energy Symposium Proceedings, CONF–780422, Vol. 2, 1978, Docket No. OAR–2005–0083–0081). On this point, we stated in our 1985 final rulemaking for 40 CFR part 191 that ''estimates of the risks from unmined ore bodies ranged from about 10 to more than 100,000 excess cancer deaths over 10,000 years. Thus, leaving the ore unmined appears to present a risk to future generations comparable to the risks from disposal of wastes covered by these standards'' (50 FR 38083, September 19, 1985, Docket No. OAR–2005–0083–0064). In the terms of the Precautionary Principle as presented by NAPA, exposures of this magnitude that are projected to occur several hundred thousand years into the future should not be considered to ''pose a realistic threat of irreversible harm or catastrophic consequences'' (Docket No. OAR–2005–0083–0087).

We recognize that meaningful distinctions are made today between natural background radiation and additional incremental (and involuntary) exposures caused by human activity. However, at long time frames (potentially as long as 1 million years into the future), such distinctions are less meaningful, and natural radiation levels can serve as a reasonable and logical reference point for assessing radiological impacts. We agree with NEA that a reasonable overall aim ''is to leave future generations an environment that is protected to a degree acceptable to our own generation * * * this level of protection will ensure that any radiological impacts due to disposal will not raise levels of radiation above the range that typically occurs naturally'' (NEA, p. 9, Docket No. OAR–2005–0083–0046). Our proposed approach limits doses from the Yucca Mountain disposal system in the far future to levels that represent variations in natural background and are far below doses that can be projected from uranium ore bodies or natural radiation in some locations in the U.S. and worldwide. Our proposed limit is somewhat higher than the annual average background radiation in the U.S. Using the reasoning described above, under this standard the additional radiation exposure at the time of peak dose to a resident of Amargosa Valley from the Yucca Mountain disposal system would be no greater than what would be incurred if that person moved today from the vicinity of Yucca Mountain to a nearby state. Using the NAS suggestions as a starting point, and considering international guidance and examples, we have derived the proposed dose limit to balance competing factors highlighted by NAS and acknowledged by us as important: the dual objectives to effectively address the effects of uncertainty on compliance assessment and to adhere as closely as possible to the relevant ethical principles, including a consideration of impacts on future generations. We believe that our selection of a 350 mrem standard is reasonable and effectively addresses the factors it is necessary to consider when projecting exposures very far into the future. By applying over the entire period of geologic stability beyond 10,000 years (up to 1 million years), it will capture the peak dose during that period. By doing so, our proposal is consistent with the NAS recommendation to have a standard with compliance measured ''at the time of peak risk, whenever it occurs within the limits imposed by the long-term stability of the geologic environment, which is on the order of one million years'' (NAS Report p. 2).

In all of our discussion of potential dose standards, we have emphasized the importance of perspective in evaluating dose projections at very long times. It is important to distinguish between effects that are meaningful in assuring public health and safety and those that simply illustrate a modeling exercise. We are proposing an approach to setting a dose level derived from variations in current natural background radiation in the U.S. that would relate potential exposures to the RMEI to exposures incurred today by people in other locations from sources of natural background radiation. Given the long times involved in dose projections, and the significant uncertainties, we believe that comparisons with natural sources of radiation are appropriate.

Finally, from a regulatory perspective, we have also considered that the peak dose limit would apply at any time after 10,000 years. The limit we select must be credible both at times close to 10,000 years and times much further into the future. Readers may also question whether a 350 mrem/yr standard can be considered credible at times beyond but closer to 10,000 years. (We have acknowledged that uncertainties are not immediately overwhelming and unmanageable for a period up to 10,000 years.) We think it unlikely that the peak would occur at a relatively early time beyond 10,000 years. However, should that be the case, we believe that NRC has the authority to consider not only the magnitude of the peak, but also the timing and overall trends of dose projections as it evaluates the license application. NRC will examine the full record before it in determining whether there is a reasonable expectation that the standards will be met. As an alternative, we might identify a sliding scale of compliance limits applicable at different times, but, as discussed in Section II.C.2.c, we do not believe there is a clear basis for doing so.

In addition to our proposed level of 350 mrem/yr, we took into account the

factors described above in considering various options for the peak dose limit, as discussed in the next section. Clearly, the competing considerations described above are not easily resolved. While the final standard may not be identical to any of these options, we believe that they encompass the range of values we might reasonably select. We request comment upon our proposed annual peak dose limit of 350 mrem applicable beyond 10,000 years through the period of geologic stability, the reasoning outlined above, and other ways in which we might reconcile the various influential factors at very long times.

4. What Other Peak Dose Levels Did EPA Consider?

We considered several other dose options before selecting 350 mrem as the value to propose. We request comment on the dose levels discussed in the following sections.

a. Maintain the 15 Mrem/Yr Standard at Peak Dose

One approach would be simply to apply the same level deemed protective at 10,000 years to peak exposures, whenever they might occur. This approach has been recommended by some stakeholders (Docket No. OAR–2005–0083–0022). Stakeholders have suggested defining the ''compliance period'' as the time from disposal to peak dose, stating that ''[t]his new compliance period is absolutely required by [NAS], which rejects any 10,000-year limitation on the compliance period.'' However, for the reasons discussed earlier, while we are proposing to extend the compliance period throughout the period of geologic stability, we have concerns that an approach that applies the same dose level throughout that period would not adequately recognize the complexities inherent in projections that could extend for several hundred thousand years. As a result, we believe a 15 mrem/yr standard at very long times would not be a meaningful indicator of disposal system performance, and may in fact be misleading.

We disagree with the view that the Court's decision requires us to amend our standards by extending both the compliance period and the dose limit applicable at 10,000 years to the time of peak dose up to 1 million years, and forbids us to establish standards applicable at intermediate times. The Court's decision reflected its judgment that our 2001 standards were not consistent with the recommendations of NAS as they related to the compliance period. Our goal in today's proposal is to amend our standards so that they are clearly consistent with the NAS recommendations, but also address the policy and other concerns we raised in our 2001 rulemaking. Extending the compliance period directly addresses NAS's primary recommendation. Regarding the dose limit applicable at the time of peak dose, NAS stated ''we do not directly recommend a level of acceptable risk'' (NAS Report p. 49). Similarly, NAS offered no opinion on approaches involving multiple dose standards, stating only that it viewed a 10,000-year standard by itself as insufficient (NAS Report pp. 54–56). As the Court made clear in its consideration of the ground-water protection standards, where ''NAS made no 'finding' or 'recommendation' that EPA's regulation could fail to be 'based upon and consistent with' * * * [the EnPA] left [EPA] free'' to promulgate standards to address its policy concerns. (*NEI*, 373 F.3d at 47, Docket No. OAR–2005–0083–0080.) In our view, the standard applicable for the first 10,000 years and the derivation of a different dose limit applicable beyond 10,000 years are both permissible under our EnPA authority.

From a regulatory perspective, a compliance standard on the order of 15 mrem/yr implies far more precision in projections for very long times than can be supported and, as such, is inconsistent with the ''reasonable expectation'' approach. We have also discussed at length the general agreement among international bodies and programs that longer-term standards should recognize the uncertainties involved and projections must be considered in a more qualitative manner, as one element in the overall safety case. As such, we believe it is inappropriate to portray that projections of incremental doses at such low levels can be precisely controlled at far future times and to give them excessive influence when they are not critical to improvements in health and safety. Here again, we believe our statement from the 2001 rulemaking bears repeating: ''[s]etting a strict numerical standard at a level of risk acceptable today would ignore this cumulative uncertainty and the extreme difficulty of using highly uncertain assessment results to determine compliance with that standard'' (66 FR 32098). From that perspective, holding the Yucca Mountain disposal system to a 15 mrem/yr standard would not merely be an issue of ''fairness'' to very far future generations. Instead, by not recognizing the factors that fundamentally affect dose projections at such times, it would place those generations' interests in a much higher regard, and by doing so would unreasonably constrain the current and succeeding generations' abilities to pursue achievable solutions they deem best suited to meet the interests of all generations. It would, in other words, undermine the Chain of Obligation Principle by giving ''long-term hypothetical hazards'' precedence over ''near-term concrete hazards'' (''Deciding for the Future: Balancing Risks, Costs, and Benefits Fairly Across Generations,'' 1997, Docket No. OAR–2005–0083–0087). It is not simply a question of whether a 15 mrem/yr standard could be met in actuality; rather, the question is whether holding probabilistic assessments to such a level over hundreds of thousands of years, when rising uncertainties exist in performance projections and various high-consequence (but necessarily somewhat speculative) scenarios must be considered in the analyses, represents a reasonable test of the disposal system. We believe it does not.

b. 100 Mrem/Yr Standard at Peak Dose

In evaluating dose limits that might be responsive to the concerns outlined above, we also considered 100 mrem/yr as a value that may be appropriate for peak dose calculations. The value of 100 mrem/yr has potential benefits in terms of precedent. The ICRP has since 1985 (Publication 45, ''Quantitative Bases for Developing a Unified Index of Harm,'' Statement from the 1985 Paris Meeting of the ICRP, Docket No. OAR–2005–0083–0087) recommended 100 mrem/yr as the principal overall dose limit for public exposures from all sources excluding natural background, medical, occupational, and accidental (these three man-made sources can involve higher exposures, can involve greater understanding of the reasons for exposure, and may require informed consent from the exposed person). NRC requires that its licensees conduct operations so that individual members of the public are not exposed above this level (10 CFR 20.1301). We view this figure as representing a national and international precedent as a generally-accepted benchmark for annual public exposures from various sources.

The use of 100 mrem/yr can also be interpreted as protective of future generations' interests, yet not so restrictive as to represent an unreasonable standard for the very far future. We recognize that in practice today, doses from any particular source of radiation are generally kept to a fraction of the 100 mrem overall limit, in recognition that a person may be exposed to more than one practice or source. Given our current responsibility

to propose a peak dose standard, however, we would argue that allocation to a single source at the time of peak dose could be reasonable, as other contributors currently in the Yucca Mountain area are negligible by comparison (FEIS, DOE/EIS–0250, Section 8.3.2, Docket No. OAR–2005–0083–0086). Moreover, to assume (or even to estimate the chance) whether, how, or where other radiation facilities could develop in the far future would require immense speculation about the long-term evolution of government programs, population demographics, and technology. Relying on current conditions rather than speculating on future sources of exposure to the local population, as recommended by NAS, would justify allocating the entire 100 mrem to Yucca Mountain.[4]

Nevertheless, we have decided not to propose a peak dose standard of 100 mrem/yr because over the very long-term, we believe that natural background levels to which individuals are or could be currently exposed provides a more reasonable context in which to judge the performance of the Yucca Mountain disposal system, and because our proposed approach appropriately reflects international guidance and consensus on this issue. *See* Section II.C.3 (''What Dose Level Is EPA Proposing for Peak Dose?'').

c. Peak Dose Standard Based on Regional Background Radiation Levels

We also considered an alternative approach also based on an examination of natural background radiation levels across the country. In this approach, rather than examining total background radiation at a specific location (or State), as we did to derive the 350 mrem/yr level we are proposing today, we have looked at average levels across many States (''Assessment of Variation in Radiation Exposure in the United States,'' 2005, Docket No. OAR–2005–0083–0077). One reason for taking this approach is that it compares statewide averages calculated on a common basis. Even so, the cautions we expressed in Section II.C.3 regarding the uncertainties and variation in background radiation values remain relevant.

Using this approach, we arrived at a dose limit of 200 mrem/yr. As with our proposed approach, our overall policy goal is to establish a standard that would keep total exposures to the RMEI within the range of exposures incurred by residents of other locations today from natural background sources alone. We would not view 200 mrem/yr as excessive in the context of exposures routinely encountered today, particularly when considering the uncertainties in projecting potential doses over the very long times involved (*i.e.*, 10,000 to 1 million years).

We started by considering States with higher average background levels than Nevada. As with our proposed approach, we believe this is reasonable because the limit we establish must represent some positive incremental exposure to the RMEI. The data compiled in ''Assessment of Variation in Radiation Exposure in the United States'' (Docket No. OAR–2005–0083–0077) show that 32 States have higher average background levels than Nevada's 222 mrem/yr. Rather than identify any particular State as the reference point, as we did in the direct comparison with Amargosa Valley, we averaged the values for those 32 States and obtained an average background radiation level of 429 mrem/yr. We compared this value to the statewide average for Nevada as an indicator of more regional, rather than localized, differences. Thus, on average, residents of those 32 States today receive roughly 200 mrem/yr more from natural background radiation sources than a resident of Nevada. Considering all of the factors involved in very long-term projections, such a limit would represent a level of exposure consistent with that routinely and normally incurred in other locations. However, we have decided not to propose this approach today because our preference is to use Amargosa Valley (and the RMEI as the person our standards are designed to protect) as a point of reference, but we welcome comment on both the approach and the dose level of 200 mrem/yr derived from it.

5. How Will NRC Judge Compliance?

We require that DOE use probabilistic performance assessment to demonstrate compliance with the individual-protection standard in § 197.20 (DOE may, but is not required to, use the same technique to show compliance with the human-intrusion and ground-water protection standards). With this method, DOE will obtain a distribution of calculated dose results. This distribution will be influenced by variations in parameter values as well as fundamental uncertainties and the assumptions underlying the conceptual model(s) of disposal system evolution. In making a compliance demonstration, DOE must satisfy NRC that a specified portion of that distribution satisfies the dose criterion. In our 2001 rulemaking, we specified in § 197.13 that the mean of the distribution of results be used to demonstrate compliance with § 197.20. In doing so, we intended that the arithmetic mean (commonly known as the average) of the distribution be used, but did not feel the need to be so specific. The arithmetic mean is a well-understood measure that is used in many compliance applications, including at WIPP. As discussed later, we intend to retain the arithmetic mean for the compliance measure for the first 10,000 years after disposal.

However, for the period beyond 10,000 years, for which we must consider assessing performance for as long as 1 million years (the NAS's estimated period of ''geologic stability''), we realize that some additional specification is necessary. Although we do not believe that the basic approach to performance assessment should be affected, we discuss in Section II.D certain aspects of that approach that may need to be modified or given special attention to effectively address these much longer times in a meaningful way. Similarly, we must consider whether the arithmetic mean used for compliance at 10,000 years remains the appropriate measure of compliance, particularly at very long times, or whether another measure is more appropriate.

We believe that for these very long-term projections, a measure that represents a ''central tendency'' in the distribution of calculated doses is most appropriate to adequately consider the range of uncertainty in making dose projections over such very long time spans. Such a measure should not be strongly influenced by high or low-end projections that represent low probability situations. Today we are proposing to specify that compliance with the standard that will apply beyond 10,000 years should be measured against the median of the distribution of projected doses. The remainder of this section discusses our rationale for this approach.

In general, the compliance measure we select must be meaningful and representative of the entire distribution of calculated doses, but, as we have stated, not easily influenced by results either at the very high or very low end of the distribution. In conducting

[4] This approach would also be consistent with the recent ICRP draft for consultation on optimization of radiological protection, which states ''the choice of the relevant dose constraint for protection against exposures from the licensed facility under consideration will depend largely on whether or not this facility is the dominant source to the exposed public under consideration. If the facility is the dominant source, a dose constraint of 1 mSv/a [100 mrem/yr] would be the appropriate starting point for optimisation of protection'' (''The Optimisation of Radiological Protection,'' p. 45, April 2005, Docket No. OAR–2005–0083–0052).

performance assessments many assumptions and uncertainties must be incorporated into the complex calculations. In constructing scenarios for repository performance, there are uncertainties in describing how the disposal system will perform and evolve over time, under the influence of natural conditions and the effects of the repository itself on the surrounding host rock. There are significant uncertainties in predicting when discrete events, such as seismic activity, will occur at and around the immediate repository location and the possible effects of these events. Some scenarios incorporating these uncertainties would be of low probability, and the results could vary from relatively poor performance to exceptionally good performance of the disposal system. The results of such low-probability situations with dramatically different results than the majority of the projections would show up in the ''tails'' of the dose results distribution. While we believe such low-probability situations should not be ignored in compliance decisions, neither do we believe they should be given undue influence in judging compliance. Therefore, we believe that the appropriate compliance measure should represent a central measure for the dose projections, and should not be defined in a way that it can be strongly affected by extreme results (''outliers'') in the dose projections (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments, Sections 12.1 and 12.2, July 2005, Docket No. OAR–2005–0083–0085).

Today we are retaining, and more clearly specifying, the arithmetic mean of the dose projections for compliance within the initial 10,000-year period. We believe the arithmetic mean is a familiar and well-understood statistical concept, and that its application in probabilistic risk assessment is sufficiently established to support our decision. In addition, while uncertainties are present in performance assessments during this time frame, we believe that the uncertainties increase in importance as the assessments stretch into the extremely long time frames beyond 10,000 years but within the period of geologic stability. In this sense, we believe that the arithmetic mean (average value) of the dose projections can still be a reasonably reliable measure of the total dose distribution during the 10,000-year period. More importantly, however, we believe it is valuable to maintain consistency between the compliance measure used for the first 10,000 years of disposal system performance for the Yucca Mountain repository and the measure applied for any other geologic disposal application under the authority of our generic regulation for geologic disposal, 40 CFR part 191. We believe that the Yucca Mountain disposal system should be required to meet the same level of protection, and be evaluated under the same regulatory compliance framework, as any other geologic disposal application for the 10,000-year period considered in part 191, which has been applied to the WIPP facility specifically and would apply to any other disposal system in the future. In the unlikely event that performance assessments show that the peak dose would occur within the 10,000-year period, we believe that the same compliance measure and evaluation should be applied for the Yucca Mountain disposal system as for any other geologic disposal system.

However, we have noted repeatedly that extending the compliance period to time frames well in excess of 10,000 years introduces additional uncertainty in making disposal system performance projections, since the natural system will continue to change through time (see ''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Section 12.5, July 2005, Docket No. OAR–2005–0083–0085, and the 2001 BID, section 7.3.11, Docket No. OAR–2005–0083–0050). We believe probabilistic calculations are the most appropriate approach to assess the range of potential doses over very long time frames, both for the period up to 10,000 years and after. The probabilistic approach examines a spectrum of possible site conditions, and allows the construction of conceptual models that address reasonable alternative models of performance within that range of possible physical and chemical conditions at the site. A distribution of projected peak doses will result from these analyses, each representing a possible ''future'' and a dose associated with the specific parameter values chosen for each calculation. Only by examining the relative effects of variations in the parameter values on the calculated dose can the important Adriver'' parameters be identified. Without these types of analyses, an understanding of the disposal system's behavior in the long term would not be possible, and a compliance case supporting a decision about the protectiveness of the disposal system might not be a reasonable representation of potential risks. We are proposing to require that DOE apply this general approach for assessments regardless of time frame, although, as we have discussed earlier, there is much agreement that the level of confidence or meaning that can be placed in such analyses decreases over very long periods. The challenge lies in defining a performance measure that balances the uncertainties inherent in very long term projections and provides a reasonable level of protectiveness.

Similarly, some discussion is warranted on the role of conservatism in performance assessment. Excess conservatism in constructing scenarios, i.e., making assumptions to include or exclude specific FEPs and defining parameter value ranges, can easily lead to very high dose estimates due to a compounding effect of very conservative assumptions. Such excessive conservatism is misleading if incorporated in assessments described as the Anominal'' or Abase case'' performance projections. A simple arithmetic mean calculated for an excessively conservative analysis would suggest that the ''most likely'' dose is higher than if a more reasonable and realistic approach were taken to framing the assessments. Recognizing that conservatism in long-term performance projections may be unavoidable in practice, as discussed below, we believe that a regulatory performance measure should not give undue emphasis to high-end projections. It is always possible to propose scenarios where releases are high, even though the probability of these particular scenarios may be extremely small or very difficult to estimate. The same reasoning also applies to scenarios that result in very low releases in the very long term. The ''bounding'' approach to assessments plays an important role in the light of the increasing uncertainties. Once the time frame for performance projections is extended into the very long term, the confidence that can be placed on either the high- or low-end release scenarios becomes progressively more difficult to estimate even though a ''bounding'' approach may simplify calculations. Consequently, we believe that a performance measure for these very long term assessments should not over emphasize high-end release scenarios or ignore low-end release scenarios under the motivation for conservatism in the assessments.

In addition, uncertainty and conservatism can influence one another. Characterization of the site today yields a range of values for important parameters that would have a dominant effect on projecting doses from contamination plumes eventually released from the repository, and these

data form the base of the parameter value distributions input to the dose calculations. Attempting to project the evolution of these parameter values over the 1 million year geologic stability period adds additional uncertainty in their variations. To address these uncertainties in parameter value estimation and scenario construction, analyses of disposal system performance may be done Aconservatively,'' *i.e.*, by selecting parameter values, constructing scenarios, and making assumptions that deliberately overestimate projected doses. This approach provides some confidence that uncertainties and other potential negative influences have been adequately considered and that regulatory decisions will not be based on overly optimistic views of disposal system performance. However, the distribution of doses, as well as peak doses, from such an approach will be biased toward high-end values. As a result of making conservative assumptions and parameter distributions, there is a very real possibility that high-end projections could represent highly improbable situations in a physical sense (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Sections 1 through 12, July 2005, Docket No. OAR–2005–0083–0085). For such cases, arriving at a compliance decision becomes complex and speculative. Thus, we believe the appropriate measure of compliance for peak dose estimates is a ''central tendency'' measure which is not strongly influenced by low-probability realizations giving either very high-end or low-end dose estimates (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessments,'' Sections 12.1 and 12.2, July 2005, Docket No. OAR–2005–0083–0085).

The NAS also found this approach to have merit. NAS recommended that regulatory decision making should consider the period when risks are at their highest, whenever that occurs, *i.e.*, the time of peak dose (NAS Report pp. 2, 6). In defining ''risk,'' the NAS used the term Aexpected value'' in referring to a probabilistic distribution of projected doses (NAS Report p.65). NAS did not further define this term in a statistical context, but elsewhere provided qualitative language describing the overall goal: ''define the standard in such a way that it is a useful measure of the degree to which the public is to be protected from releases from a repository'' and ''does not rule out an adequately sited and well-designed repository because of highly improbable events'' (NAS Report pp. 27–28). NAS in its recommendations did not speak explicitly to any particular performance measure to be used in determining compliance with regulatory standards. This decision was to be left to EPA in the course of rulemaking.

Disposal programs abroad also have to consider the role of uncertainty in developing performance assessments. The U.S. is ahead of most other geologic repository programs abroad in terms of having a specific site that has been extensively characterized and for which detailed performance assessments have been done. While other programs have not reached the stage of developing specific regulatory criteria for judging the acceptability of a particular repository site and design, there is a general consensus that multiple lines of evidence and analysis are desirable in establishing a safety case, and that judgment plays a critical role in assessments of disposal system performance as well as establishing and applying regulatory criteria (IAEA–TECDOC–975, Docket No. OAR–2005–0083–0045). The joint NEA-IAEA International Peer Review for DOE's TSPA-SR modeling highlighted the difficulty of specifying the statistical measure of compliance, noting that ''the TSPA nominal case is treated probabilistically yet it involves a mixture of embedded conservatism and statistical analyses to determine the mean, median and the various percentiles of the dose distribution. The reported ''mean'' is therefore not the true mean in a statistical sense. Moreover, that value is reported in the Executive Summary of the TSPA–SR and elsewhere as the expected value of effective dose, without any qualification. This stretches credibility especially as the discrete numerical values are given for times in the far future. The USDOE needs to indicate that, for compliance purposes, a performance indicator has been chosen that is meant to illustrate the safety of the system and argue the compliance with regulation.'' The Peer Review Team further recommended that ''when a best estimate/best knowledge probabilistic analysis is performed, the best estimate or the most probable range of the calculated 'dose' should also be given.'' (pp. 54–55, Docket No. OAR–2005–0083–0062)

In determining the ''expected value'' of performance, some international efforts have considered the possibility of viewing the performance assessment as separate representations of scenarios driven by their relative likelihood, and which might be compared to different regulatory standards. For example, regulatory agencies of France and Belgium have developed a joint document that suggests preparation of ''reference evolution'' and ''altered evolution'' scenarios (''Geological Disposal of Radioactive Waste: Elements of a Safety Approach,'' p. 24, 2004, Docket No. OAR–2005–0083–0066). The reference evolution scenarios would consider ''the most likely effects of certain or very probable events or phenomena,'' while the altered evolution scenarios ''take into account the least likely effects of these events or phenomena'' as well as considering ''the consequences of events or phenomena that are not integrated into the reference scenario, as the likelihood of occurrence is lower.'' Under this approach, the reference evolution scenarios might be directly compared to the dose constraint, while the altered evolution scenarios ''must be appraised on a case by case basis depending on'' various factors, and may then be ''compared to different references * * * without this comparison constituting an absolute acceptance criterion.'' This approach appears to go further than that recommended by the TSPA–SR Peer Review Team (and discussed in relation to our reasonable expectation principle in Section II.B). DOE similarly identifies ''nominal'' and ''disruptive'' scenarios, but aggregates the results for comparison with the relevant criteria.

As stated earlier, we required in our 2001 rulemaking that DOE use the arithmetic mean of the distribution of results to demonstrate compliance with the 10,000-year dose limit (and are today proposing to clarify the use of that measure). However, in considering the much longer times, we are concerned that the arithmetic mean is too easily influenced by extremes in the distribution, particularly very high dose projections resulting from scenarios that are unlikely to occur. A conservative approach to constructing and evaluating performance scenarios tends to generate high-end results and a simple averaging of these results would drive the arithmetic mean to higher values that would not be as representative overall of the actual distribution of projected doses. Therefore, we do not believe the arithmetic mean will satisfy the goals laid out earlier in this section for a performance measure for periods well in excess of 10,000 years.

While typically the ''average'' of a series of values (*i.e.*, a distribution) is thought of as near the midpoint between the highest and lowest values, if a somewhat conservative approach is taken or there are significant outliers, it

is not unusual for the arithmetic mean to approach significantly higher percentiles. In such cases, the regulatory compliance decision can be influenced by the high-end doses of an overall set of very conservative performance assessment results. In fact, for early occurrences of disruptive events (human intrusion or igneous intrusion), DOE assessments show that at some periods of time the arithmetic mean of the projected doses can exceed the 95th percentile of the distribution of TSPA results (FEIS, DOE/EIS–0250, Appendix I, Section 5.3, Docket No. OAR–2005–0083–0086). While conservatism in assumptions is not the only reason for the arithmetic mean to occur at a relatively high percentile, in general we do not believe this can be reasonably interpreted to be an adequate representation of central tendency for the purpose of judging the performance of the Yucca Mountain disposal system.

Thus, we found it necessary to consider what other statistical measures might better represent the central tendency for performance assessments at very long time frames. The identification of appropriate statistical measures for central tendency of a dose distribution is influenced by the shape of the distribution, when these estimates are plotted for a particular point in time, or more specifically for the peak dose values from each computer modeling simulation in the disposal system performance assessments. We have examined three measures of central tendency: the arithmetic mean, the geometric mean, and the median. The degree to which they reliably represent the central tendency of a particular distribution, and more importantly how well they could serve as compliance measures, is discussed below. Like the arithmetic mean we have discussed above, each measure has advantages and disadvantages, and is dependent on the actual shape of the dose distribution as to how well it would represent the central tendency (''Assumptions, Conservatisms, and Uncertainties in Yucca Mountain Performance Assessment,'' Sections 12.1 and 12.2, July 2005, Docket No. OAR–2005–0083–0085).

The most familiar shape for a distribution is the bell-shaped ''normal'' distribution. In a normal distribution, the ''peak'' occurs in the center of the distribution and the remaining values lie evenly on both sides of the center value. A normal distribution is often seen when values are relatively close together (*i.e.*, the range of values does not cover many orders of magnitude), and are produced from a continuous function composed of additive terms. Because the values of the distribution are evenly spread out around the central peak, the distribution can be seen to be symmetrical; that is, one side is the ''mirror image'' of the other. The arithmetic mean can be easily determined from such a distribution because an equal number of values are found at the same distance from the peak (*e.g.*, if the peak is at 10, there will be equal occurrences at 9 and 11, at 8 and 12, and so on). Thus, the center line in a purely normal distribution represents the arithmetic mean of the distribution. From the discussion earlier in this section, it should be clear that the performance results do not represent a purely normal distribution. In a purely normal distribution, the arithmetic mean cannot be as high as the 60th percentile, much less the 70th, 80th, or 95th percentile. It must always be the 50th percentile. For this reason, we believe it likely that at long times the arithmetic mean will be more strongly influenced by higher-end estimates (estimates lower than zero are not possible) and less representative of the overall distribution.

As an alternative, we considered whether the geometric mean of the distribution would be an appropriate statistical measure. Referring back to the shape of the distribution as an indicator of the measure of central tendency, we noted earlier that the bell-shaped curve is the most familiar shape. However, many measured quantities in nature show a distribution skewed toward higher-end values, *i.e.*, there is no symmetrical distribution around a central value (''The Lognormal Distribution in Environmental Applications,'' EPA/600/S–97/006, December 1997, Docket No. OAR–2005–0083–0057). When data like these are transformed by taking their logarithms and plotted on a logarithmic scale, the data can appear ''normally'' distributed. Such distributions are referred to as log-normal. For such ''transformed'' data, the geometric mean is used as the measure of central tendency (that is, the geometric mean of a log-normal distribution has a comparable significance to the arithmetic mean of a normal distribution).[5] The fact that the arithmetic mean has been significantly higher than the 50th percentile in DOE's published performance assessment results suggests those distributions might be log-normal in nature, which would indicate the geometric mean as the appropriate statistical measure of central tendency. As a point of comparison, the geometric mean of a log-normal distribution is always lower than the arithmetic mean. This makes the geometric mean attractive if we are concerned about the undue influence of high-end estimates, as the geometric mean will always show less influence than the arithmetic mean.

However, there are some difficulties in using the geometric mean that must be considered. One difficulty is related to the nature of the geometric mean itself. Because the calculation involves the taking of the logarithm, the distribution values are expressed in terms of their exponential values, which may then be ''averaged.'' For example, the logarithm of 100 is 2, because $100 = 10^2$ (or 10 to the 2nd power). Similarly, the logarithm of numbers less than 1 are expressed as negative numbers (*e.g.*, the logarithm of $0.01 = -2$, because 0.01 can also be written as 10^{-2}). Thus, in the same way that the arithmetic mean might be affected by a few very large values in a distribution, the geometric mean can be affected by very small numbers whose logarithms are expressed as very large negative numbers.

In practical applications, this means that a distribution that generally appears log-normal can contain some very small numbers (outliers) that affect the geometric mean as a measure of central tendency. Depending on how many and how small these outliers are, the calculated geometric mean can also be very different from the 50th percentile of the distribution. For Yucca Mountain, this situation could represent a case where the waste packages remain essentially unbreached through the geologic stability period, leading to very small doses (and correspondingly high negative logarithms of those dose values). This scenario might have a very low probability in reality, but could influence the geometric mean, possibly causing it to be lower than the 50th percentile of results calculated from all the performance scenarios taken in total (and possibly very much lower). Alternatively, extremely pessimistic scenarios for waste package releases could give high-end outliers, although

[5] The formula for calculating the geometric mean (GM) for a series of values, $x_1, x_2, x_3 \ldots X_n$, is $GM = \sqrt[n]{x_1 * x_2 * x_3 \ldots X_n}$, while the formula for calculating the arithmetic mean (AM) is $AM = (x_1 + x_2 + x_3 \ldots x_n)/n$. For the GM calculation no zeros are permissible, and the GM is always less than the AM. For parameter values in a skewed distribution (skewed to high-end values) that is transformed into a log-normal distribution, the formula for the GM is expressed as $\ln GM = (1/n)(1n\ x_1 + 1n\ x_2 + 1n\ x_3 \ldots + 1n\ x_n)$. It can be seen that the GM of the log-transformed values in a log-normal distribution is calculated in the same fashion as the AM for a normal distribution. Both the AM and the GM are measures of central tendency for their respective distributions and equivalent to the median of the distributions as long as the distributions are truly normal or log-normal.

the high-end projections may not affect the geometric mean as much because the site's characteristics will not easily allow orders of magnitude increase in releases to reach the RMEI. In terms of the logarithmic values, the difference between 0.001 mrem and 0.1 mrem is exactly the same as the difference between 1 mrem and 100 mrem (two orders of magnitude), yet the difference in actual site performance is clearly more significant between 1 mrem and 100 mrem. Thus, while it is possible to have very low-dose estimates, micro-rem/yr and below, which have large negative logarithms, there will not be correspondingly high dose estimates in the tens to hundreds of thousands of rem/yr (with equally high positive logarithms) to counterbalance the very low numbers, and therefore these very low numbers could exert a stronger effect on the geometric mean as an indicator of central tendency. In such cases, the values of the geometric mean as a central tendency performance measure could be compromised.

An additional complication exists for the regulator using the geometric mean to judge compliance. Because the logarithm of the value must be taken, dose projections of zero must be removed from consideration altogether (the logarithm cannot be calculated). However, extremely low (and highly influential) non-zero values may be retained in the analyses, simply because computers are able to track them. That is, projected doses that are in reality essentially indistinguishable from zero can be calculated and carried through the analysis. If care is not taken, projections could include doses such as 10^{-20} mrem/yr, which is meaningless in actuality (and clearly the logarithmic value of -20 cannot be offset by any single high-end estimate). The regulatory analyst is then faced with the prospect of ignoring simulations that yield no dose, eliminating values below a certain level (for very low dose estimates), or assigning some arbitrary value to them simply to calculate a geometric mean. Eliminating small values from consideration would not be consistent with our cautions (see discussions on reasonable expectation) that low-end projections should not be discounted in favor of higher estimates.

It is also not proven that the distribution of performance assessment results is truly log-normal. As noted above, DOE's previously published TSPA results indicate that the distribution of the peak dose values is skewed to one side, so that values are not evenly distributed around a central point (FEIS, DOE/EIS–0250, Appendix I, Section 5.3, Docket No. OAR–2005–0083–0086). We have mentioned the role of conservatism in framing dose assessments and biasing them to high-end values, so this skewed distribution is not surprising. Such skewed distributions often appear to be log-normal, for which the geometric mean represents the central tendency. However, while we have some confidence that future DOE results will be skewed toward the high end, we cannot predict with certainty that the distributions are truly log-normal, although we can say that they display two prominent characteristics of log-normal distributions. First, the results span several orders of magnitude, making the use of logarithmic conversions effective in putting the values on a convenient scale. Second, its derivation involves multiplicative functions which are imbedded in the performance simulations, while normal distributions arise from simpler functions that are additive in nature. Their actual shape will be affected by DOE's modifications to the TSPA as it works through the licensing process. The geometric mean may not actually represent the best measure of central tendency if the distribution is not log-normal.

For these reasons, we are not proposing to use the geometric mean as the measure of compliance at the time of peak dose. This brings us to the third statistical measure we considered for these very long times, the median of the distribution, for which 50% of the values lie above and 50% lie below. The median is a simpler measure of central value for any distribution of dose estimates. It is independent of the shape of the distribution and therefore avoids concerns about how well the performance assessment results may or may not strictly conform to the normal or log-normal profiles, and attendant uncertainty about how close the respective ''means'' are to the center of the distribution. In this respect, the median is an attractive alternative to the geometric or arithmetic means as a measure of central tendency that will not be strongly influenced by high or low-end outliers in the calculated projections. There is no need to eliminate or truncate results at the low end, as there may be for the geometric mean. Further, if the distribution includes many very low estimates, the median could actually be higher than the geometric mean. As such, it is also consistent with our reasonable expectation principle.

As an additional advantage, if the distribution ultimately falls close to either a normal or log-normal distribution, the median converges with the arithmetic or geometric mean, respectively. It can be clearly seen that the median and arithmetic mean are identical for a normal distribution, as the ''mirror image'' around the arithmetic mean also shows that exactly half of the results fall on either side. For a log-normal distribution, the same result can be seen when the initial values are transformed by taking their logarithms. Since by definition the transformed data takes on the shape of the normal distribution, the geometric mean assumes the role of the arithmetic mean for that transformed distribution and is coincident with the median. From the formulas in footnote 5, it is evident that the geometric mean for log-transformed data (a log-normal distribution) is calculated in the same manner as the arithmetic mean for non-transformed data in a normal distribution. This means that, if the performance assessment results align closely with the defined normal or log-normal distributions, the median will converge with the other statistically defined measures of central tendency for those distributions. If the results are very highly skewed toward a true log-normal distribution, the geometric mean essentially equates to the median, but without the calculational issues described earlier. If less conservatism is incorporated into the analyses and the resulting distribution is less skewed so that it more closely resembles a normal distribution, the arithmetic mean essentially converges with the median and the performance measure approaches that used to show compliance within 10,000 years.

These relationships between the arithmetic and geometric means and the median are strictly correct only as long as the distributions fit the profiles for either the normal or log-normal distributions. If the actual shapes of the distributions differ to some degree from the ideal defined shapes, the means, either arithmetic or geometric, will not be coincident with the median values for the distributions, the degree of departure being dependent on exactly how much the distributions depart from the ideal ''normal'' or log-normal'' shapes. Deviations from the ideal normal and log-normal distribution shapes and the effects on these measures as representative of the central tendency for the calculated dose projections, are of critical importance in selecting the compliance measure. The likelihood of deviations discourages our use of either the arithmetic or geometric mean at the time of peak dose, but has limited effect on the use of the median.

Therefore, we propose to use the median of the dose distribution as the

performance measure for compliance in the post-10,000-year period and request comment on that decision. Readers may note that our 1999 proposal, as well as 40 CFR part 191, specified that DOE use the (arithmetic) mean or median, whichever was higher. We determined that the arithmetic mean would always be higher for periods up to 10,000 years. Thus, we specified the more conservative measure to apply up to 10,000 years. However, as noted above, the arithmetic mean may be overly influenced by higher-end estimates. Therefore, we do not consider it the appropriate measure for times in excess of 10,000 years.

In summary, we propose to maintain and clarify the use of the arithmetic mean for compliance with the 10,000-year standard. We believe this is appropriate because the shorter-term projections are not as influenced by the uncertainties or variability in performance scenarios seen at much longer times. Fewer very high-end estimates are expected and, therefore, overall the distribution of doses would be less skewed and more representative of ''expected'' performance. Further, in the unlikely event that the peak dose is found to occur within the first 10,000 years, the arithmetic mean would be consistent with the statistical measure used in all other applications for geologic disposal, *i.e.*, 40 CFR parts 191 and 194 for the 10,000-year time frame. We request comment on the clarification of the arithmetic mean as the 10,000-year compliance measure. For the period extending beyond 10,000 years, we propose to use the median of the distribution of doses calculated from the performance assessments as the compliance measure, and we request comment on this choice.

6. How Will DOE Calculate the Dose?

Our 2001 standards required DOE to calculate doses as an annual committed effective dose equivalent (annual CEDE) to demonstrate compliance with the storage, individual-protection, and human-intrusion standards. Today we are proposing to modify that requirement in a way that would incorporate updated scientific factors necessary for the calculation, but would not change the underlying methodology. Specifically, we are proposing to require DOE to calculate the annual CEDE using the radiation- and organ-weighting factors in ICRP Publication 60 (''1990 Recommendations of the ICRP''), rather than those in ICRP Publication 26 (''1977 Recommendations of the ICRP''). This point may seem straightforward to many readers. We wish to incorporate the most recent science into the calculation of dose, so why should we not do so? The complication arises from the terminology employed in the EnPA and ICRP 60 (and the follow-on implementing Publication 72, ''Age-Dependent Doses to Members of the Public from Intake of Radionuclides: Part 5 Compilation of Ingestion and Inhalation Dose Coefficients,'' 1996, Docket No. OAR–2005–0083–0087). Section 801(a)(1) of the EnPA explicitly requires our standards to ''prescribe the maximum annual effective dose equivalent to individual members of the general public.'' Thus, we are required by law to issue an individual-protection standard presented as an effective dose equivalent. The Court agreed with this reasoning when it stated that the EnPA ''require[s] EPA to establish a set of health and safety standards, at least one of which must include an EDE-based, individual protection standard.'' (*NEI*, 373 F.3d at 45, Docket No. OAR–2005–0083–0080.)

ICRP is an independent body formed to develop consensus recommendations on appropriate radiation protection measures. In doing so, ICRP considers the principles and scientific bases involved in practices that involve the generation of radiation and radioactive materials, as well as the use of those materials. Over the years, ICRP recommendations have been adopted by regulatory authorities and other scientific and advisory bodies, and have helped to provide a consistent basis for national and international regulatory standards.

In 1977 and 1979, ICRP published Report Nos. 26 and 30 (''Limits for Intake of Radionuclides by Workers''), respectively (Docket Nos. OAR–2005–0083–0087). These two reports reflect advances in the state of knowledge of radionuclide dosimetry and biological transport of radionuclides in humans that occurred over the 20 years since ICRP's 1957 dose methodology recommendation (ICRP 2). This methodology, known as the effective dose equivalent (EDE) methodology, is the basis for dose calculations performed to demonstrate compliance with 40 CFR part 191 and envisioned to be applied (although not specified) in the 2001 version of 40 CFR part 197. The EDE methodology was first incorporated into Federal Guidance in 1987, in ''Radiation Protection Guidance to Federal Agencies for Occupational Exposure'' (52 FR 2822, January 27, 1987; Docket No. OAR–2005–0083–0078).

The basis of the EDE methodology is that each organ in the body reacts to radiation differently, *i.e.*, some are more likely than others to react by developing a cancer. This methodology takes these differences into account by assigning a ''weighting factor'' to each organ relative to the whole body. The weighting factor reflects the likelihood, that is, risk, of fatal cancer developing in that organ per unit of dose. When added together, the risk-weighted doses incurred by the individual organs of the body become the ''effective dose equivalent.'' In this manner, the risk of radiation exposure to various parts of the body can be regulated through use of a single numerical standard.

ICRP 26/30 uses the term ''effective dose equivalent.'' ICRP 60/72, which offers some improvements to the biokinetic models used in ICRP 30 and thereupon updates the organ-weighting factors based on more recent scientific studies, uses the term ''effective dose.'' It may appear from this difference in terminology that we cannot both fulfill our statutory mandate and specify the use of the ICRP 60/72 factors.

However, we do not believe this is the case. First, ICRP made it clear in Publication 60 that it was adopting the shorter nomenclature for ease of use, but did not intend to change the underlying approach of ICRP 26/30: ''The weighted equivalent dose (a doubly weighted absorbed dose) has previously been called the effective dose equivalent but this name is unnecessarily cumbersome, especially in more complex combinations such as collective committed effective dose equivalent. The Commission has now decided to use the simpler name effective dose, *E*'' (ICRP Publication 60, p. 7, Docket No. OAR–2005–0083–0087).

Second, we have used the different terms interchangeably in various applications over the years. Historically, this concept has been referred to as effective dose equivalent, effective dose, and total effective dose equivalent, depending on when the terms were used and the weighting factors applied. The concept of a ''committed'' dose is inherent in the methodology (and recognized by ICRP, as in the previous citation), but we have applied the term to more explicitly acknowledge the continuing dose contribution over a period of years from radionuclides taken into the body through ingestion, inhalation, or absorption.

For example, our standards in 40 CFR part 191 are written in terms of committed effective dose (CED). These standards were finalized in 1993, after the publication of ICRP 60 and passage of the EnPA. At that time, our most recent Federal Guidance Report No. 11, ''Limiting Values of Radionuclide Intake and Air Concentration and Dose Conversion Factors for Inhalation,

Submersion, and Ingestion'' (EPA–520/1–88–020, September 1988, Docket No. OAR–2005–0083–0071), which was issued to serve as the basis for regulations setting upper bounds on exposures in the workplace, specified the ICRP 26/30 method to calculate CEDE. Appendix B of 40 CFR part 191 also specified use of the ICRP 26/30 weighting factors, but to calculate CED. Thus, we used two different (albeit similar) terms to represent the use of an identical methodology and associated weighting factors. From this, it should be clear that we have historically considered CED and CEDE to represent essentially the same approach, regardless of the weighting factors used.

In today's proposal, we are specifying in the definition of effective dose equivalent in § 197.2 that DOE will calculate annual CEDE using the radiation- and organ-weighting factors in ICRP 60/72, which we are proposing to be incorporated into a new Appendix A. This represents the most recent science and dose calculation approaches in the area of radiation protection, which we previously endorsed in our Federal Guidance Report No. 13 (''Cancer Risk Coefficients for Environmental Exposure to Radionuclides,'' EPA 402–R–99–001, September 1999, Docket No. OAR–2005–0083–0072). We believe this change is appropriate and reflective of the direction of the international radiation-protection community as well as EPA's own guidance. Furthermore, we believe this approach is consistent with the intent and direction of the EnPA. The EnPA directs us to prescribe our standard for protection of individuals in the form of a general class of standards known as effective dose equivalent standards. We have done that by using a standard in the form of committed effective dose equivalent, which is a member of the class of effective dose equivalent standards. We request comment on this proposed change.

Regardless of the preferences of radiation experts, the public may be unfamiliar with the differences between the two methods and ask whether a given dose level (for example, 15 mrem/yr) is equally protective when expressed under each method. The calculation of dose from individual radionuclides may be affected in different ways, depending on which organs they tend to affect and the pathway through which they enter the body. For example, consider two radionuclides that occur in the expected inventory at Yucca Mountain, such as technecium-99 and neptunium-237. For a given intake, the dose from technecium-99 is higher using the ICRP 60/72 system than it is using the ICRP 26/30 system. On the other hand, the dose from a given intake of neptunium-237 is lower using the latter system compared to that calculated using the former. However, in the majority of cases, the effect of changing from one system to the other is small (''Dosimetric Significance of the ICRP's Updated Guidance and Models, 1989–2003, and Implications for Federal Guidance,'' ORNL/TM–2003/207, August 2003, Docket No. OAR–2005–0083–0070). Further, the overall factors used to convert dose to risk remain unchanged by today's proposal. Therefore, the estimated risk from a given radiation dose remains the same. Therefore, the 15 mrem/yr standard incorporated into today's proposal represents the same level of protection as the originally promulgated standards.

We have also considered whether to allow for the use of future updates to the organ weighting or other factors. We believe this may be appropriate because DOE will continue to perform projections for many years, and the final demonstration before repository closure and license termination may be decades or even more than one hundred years into the future. A provision allowing such updates ensures that the most current science can be applied at all times. Therefore, we are including a provision in our proposed Appendix A allowing DOE to use, with NRC approval, updated dose calculation factors. We have tried in today's proposal to make clear the basis for our acceptance of the ICRP 60/72 factors as sufficiently validated to be incorporated into rulemaking. To ensure that such factors that might be considered in the future have been appropriately reviewed and accepted by the scientific community, we propose that NRC may only approve factors that have been issued by independent scientific bodies (such as ICRP and its successor bodies) and incorporated by EPA into Federal Guidance. To ensure compliance with the EnPA, we would also require that the new approach be compatible with the effective dose equivalent methodology incorporated into today's proposal. We request comment on this approach.

Commenters may be aware that the NAS released in June 2005 the latest in a series of studies on the Biological Effects of Ionizing Radiation (BEIR VII, Docket No. OAR–2005–0083–0087). EPA is a major sponsor of these studies, which we consider in developing our regulations and Federal Guidance. The BEIR VII report reaffirmed that evidence exists that even the smallest radiation dose may convey some risk of incurring a cancer, and that risk increases proportionally to the dose (*i.e.*, if the dose doubles, the risk also doubles). This approach, known as the ''linear non-threshold'' hypothesis, has served for many years as the basis for all radiation protection regulation and guidance, including those issued by EPA. Further, the linear non-threshold approach is the source of the assumptions regarding the dose-risk relationship underlying both our 2001 rulemaking and today's proposal. Thus, the primary conclusion of the BEIR VII study does not affect the revision of our Yucca Mountain standards.

For a detailed discussion of potential health effects related to exposure to radiation, as well as further explanation of the underlying relationship between radiation dose and cancer risk, see the preamble to the 1999 proposed rule (64 FR 46978–46979, August 27, 1999, Docket No. OAR–2005–0083–0041) and Chapter 6 of the 2001 BID (Docket No. OAR–2005–0083–0050).

D. How Will Today's Proposal Affect the Way DOE Conducts Performance Assessments?

We find it important to emphasize certain key aspects of the performance assessment that will apply regardless of the time frame involved. First, the overall purpose of our standards is to provide a reasonable test of disposal system performance. The overall purpose of the performance assessment is to provide a reasonable test for compliance with those standards. A major part of providing that reasonable test is determining which features, events, and processes (FEPs) are to be included in the performance assessment performed by DOE. Regardless of time frame, we find it reasonable to limit the consideration of FEPs and scenarios (sequences or combinations of FEPs) to those reasonably likely to occur and to affect the disposal system during the compliance period. Finally, in addressing those scenarios, it is also reasonable to further prescribe certain aspects of the way they are considered (''stylizing''), particularly when their characteristics are difficult to establish with confidence. This section provides an overview of the performance assessment process and addresses in more detail the key aspects just mentioned.

The long-term performance of the disposal system is assessed through complex probabilistic computer simulations aimed at quantifying the behavior of the disposal system over time. The change in the compliance period does not affect fundamentally how the disposal system performance

assessment simulations are constructed and executed. The performance assessment takes into consideration the physical and chemical characteristics of the disposal system, and imposes on that characterization the events and processes expected to occur during the compliance period. The DOE has already conducted and published many of its performance assessment results focusing on periods up to 10,000 years to support its Viability Assessment, FEIS, and site recommendation. While many of those projections did cover times up to 1 million years, DOE did not focus as much attention on the assumptions and characterization of those longer-term processes and events, or necessarily conduct those projections in a way suitable for demonstrating compliance with a regulatory standard because there was no quantitative standard past 10,000 years. Today we are proposing certain provisions that will affect DOE's treatment of longer-term projections for compliance purposes, but will not alter the requirements issued in 2001 for compliance within 10,000 years.

The performance assessment is developed by first compiling listings of features (characteristics of the disposal system, such as the description of the disposal system geologic setting), events (discrete events that can occur at the site, such as seismic events, *i.e.*, earthquakes), and processes anticipated to be active during the performance period of the disposal system (such as corrosion processes operating on the metallic waste package). These items are collectively referred to as ''FEPs'' (features, events and processes). These FEPs are then used in combination to construct scenarios, which are essentially potential ''futures'' for the disposal system. A scenario describes one possible path along which the disposal system could evolve from the time of closure through the time of peak dose. Individual FEPs are components of scenarios and can be combined in various ways; while some FEPs, such as infiltration of water through the repository, will be included in nearly all scenarios, low-probability FEPs may appear in only a few. Thus, a scenario can be visualized as a time history for the disposal system, beginning, for example, with precipitation over Yucca Mountain and water infiltration into the subsurface above the repository, and ending with a dose assessment for the down-gradient RMEI making use of the ground water moving from beneath the site. Natural parameter variations (such as differing ground-water movement rates through the repository and in the aquifers below the repository) give rise to many potential ''futures'' for a particular scenario, depending on the exact parameter values chosen from the distribution of possible values, for each computer simulation of repository performance. For ease of calculations, scenarios with similar characteristics may be grouped into scenario classes. More extensive descriptions of the scenarios used to assess disposal system performance for Yucca Mountain are detailed in DOE documents supporting such analyses for various purposes (see the Viability Assessment, DOE/RW–0508/V.3, Vol. 3, Chapter 1.3, December 1998, Docket No. OAR–2005–0083–0086, and the Science and Engineering Report, DOE/RW–0539, Chapters 4.3 and 4.4, May 2001, Docket Nos. OAR–2005–0083–0069).

Scenarios have differing probabilities, depending on the likelihood of particular FEPs included in them. The dose results calculated for individual scenarios are weighted as a function of their probability to develop an overall distribution of doses with time that is the final product of the analyses. From this distribution of doses, compliance with the regulatory standard is determined in the licensing process.

In considering how to approach assessments potentially out to 1 million years, we have considered international consensus on the qualitative nature of such calculations. Although also true at the 10,000-year time frame, for peak dose it is even more evident that the performance assessment cannot be viewed as a predictor of future events and resultant releases. Instead the goal is to design an assessment that is a reasonable test of the disposal system under a range of conditions that represent the expected case, as well as relatively less likely (but not wholly speculative) scenarios with potentially significant consequences. The challenge is to define the parameters of the assessment so that they demonstrate whether or not the disposal system is resilient and safe in response to meaningful disruptions, while avoiding extremely speculative (and in some cases, fantastical) events. As NAS notes, ''The results of compliance analysis should not be interpreted as accurate predictions of the expected behavior of a geologic repository'' (NAS Report p. 71).

We recognize that many uncertainties can be bounded, and methods exist to take these uncertainties into account in evaluating compliance of the disposal system. Examples include the use of cautious, but reasonable, parameter values and assumptions that ensure the models err on the side of conservatism, and the use of probabilistic models in order to explore the range of possibilities of total system evolution. We further recognize that it can be difficult to determine when conservatism is appropriate and when it is excessive. However, as discussed earlier in this preamble, we are concerned that systematic conservatism in the face of uncertainties is inconsistent with the concept of reasonable expectation embodied in our standards. This view is also shared at the international level. A joint report by the IAEA and the NEA concludes that ''[w]hen uncertainty exists there is a tendency to skew the model or values of parameters towards conservatism,'' which ''results in embedded conservatism'' (''An International Peer Review of the Yucca Mountain Project TSPA–SR,'' p. 52, 2002, Docket No. OAR–2005–0083–0062). However, those aspects of the disposal system and waste behavior that depend upon physical and geological properties can be estimated within reasonable limits of uncertainty.

Still, ''[e]ven in the initial phase of the repository lifetime, a compliance decision must be based on a reasonable level of confidence in the predicted behavior rather than any absolute proof'' (NAS Report p. 72). For performance projections made past 10,000 years, the confidence that can be placed in those projections decreases as time increases. While NAS indicated that analyses of the performance of the Yucca Mountain system dealing with the far future can be bounded, ''the uncertainties in some of the calculations that might be required could render further calculation scientifically meaningless'' (NAS Report p. 29). What is more, a different panel convened by NAS has recently stated that uncertainties often become so large that the results of a risk assessment must be deemed indeterminate (''Risk and Decisions About Disposition of Transuranic and High-Level Radioactive Waste,'' NAS, p. 91, 2005, Docket No. OAR–2005–0083–0060). Regarding natural processes and/or events that can occur during a large period of time, it becomes necessary to restrict the scenarios available to include in a performance assessment by not including events or processes that have a nearly negligible probability of occurrence over the period of geologic stability, or that introduce additional uncertainty without providing significantly new or different information about the performance of the disposal system.

It is neither useful nor necessary for EPA to require DOE to predict or model every conceivable scenario that could occur at Yucca Mountain. Rather, we

believe that it is our responsibility to design a reasonable test of the disposal system's performance over a very long time period. This implies that some possible performance scenarios should not be included in the performance assessment because their probability of occurrence is extremely low. As a means of restricting scenarios, in setting the standards in 40 CFR part 197, the Agency outlined how to identify FEPs. For purposes of the performance assessment, the value of considering a particular FEP (or series of FEPs) diminishes if either its likelihood of occurrence or its potential consequence is insignificant. Therefore, a time frame and probability cut-off measure are needed to limit the range of FEPs that could be included as candidates for the performance assessment. Without such measures, the list of FEPs would be limitless, bounded only by the imagination. The Agency determined that FEPs that could occur with a probability equal to or greater than 1 in 10,000 over a period of 10,000 years would be sufficiently likely to occur, so that they should be included among the FEPs available for selection in any particular scenario. FEPs with lower probabilities could be excluded from the analyses. This probability limit represents an annual probability of occurrence of 10^{-8} (1 in 100 million). This means, for example, an event with this minimum probability has only a one-hundredth of one percent chance of happening in any given 10,000-year period. This is an extremely conservative screening criterion. Extending the regulatory compliance period to as much as 1 million years and maintaining the annual probability cut-off of 10^{-8} would still mean that FEPs with only a one percent chance of occurring over this time period must be considered. This probability cut-off for screening FEPs for inclusion in the disposal system performance assessment provides a robust test of compliance, in that even FEPs with very low probabilities are not a priori excluded from the assessments.

Given the conservative nature of this low probability cut-off for initial FEPs screening efforts, the application of the screening criteria still produce a large number of scenarios that could be postulated, presenting perhaps an unmanageable task for the analyses and ultimately the regulatory compliance decision. In the generic rule for geologic disposal, 40 CFR part 191, and the 2001 rule for Yucca Mountain, we provided a means to manage the situation, by allowing individual FEPs or scenarios to be deleted from the licensing performance assessment if they contribute little to the dose received by the RMEI, i.e., their consequences are low—either due to the low probability of the FEPs or the low doses calculated for the scenario. In extending the regulatory performance period in the regulation to the time of peak dose, a similar provision aimed at managing the scope of the analyses is called for.

The need to maintain the assessment within a reasonable scope as a way to manage uncertainties leads us to conclude that a strict extension of the approach for 10,000-year assessments would not accomplish this overall goal. If, for example, we required consideration of events with a probability of occurrence of 10^{-4} over 1 million years ''an approach that has been suggested by some stakeholders '' it would equate to an annual probability of 10^{-10} (one in 10 billion), which encompasses events nearly as remote as the ''big bang'' that created our universe. No disposal system, and perhaps not even our planet itself, would be expected to survive the effects of such an event, and we therefore do not find it a useful indicator to distinguish between safe or unsafe performance of the disposal system. There are an unlimited number of possible futures, some of which would involve risks from a repository and others that would not. We must balance these factors to ''define a standard that specifies a high level of protection but that does not rule out an adequately sited and well-designed repository because of highly improbable events'' (NAS Report p. 28).

In addition, NAS recommended ''against an approach under which a large number of future scenarios are specified for compliance assessment, since such an approach could be seen as putting both the regulator and the applicant in the indefensible position of claiming to have considered a sufficient number of scenarios and that all reasonable future situations are represented in the analysis'' (NAS Report p. 98). NAS explicitly recognized that ''[i]t is important that the 'rules' for the compliance assessment be established in advance of the licensing process; that is, that the scenarios that might be excluded from the integrated risk analysis be identified'' (NAS Report p. 73). We emphasize that the purpose of making exposure scenario assumptions is not to identify exhaustively every possible future, but to construct a reasonable (or, as NAS put, a ''fair'') test of disposal system performance for the protection of public health. This is the case regardless of the time frame involved, and from that perspective today's proposal will not alter the way in which DOE will approach its performance assessments.

In addition to placing limits on the probability of FEPs that should be considered, an additional tool to construct the test (or set ''the 'rules' for the compliance assessment,'' as NAS stated) is to specify how certain scenarios should be assessed. This ''stylizing'' of scenarios is similar to the approach we took (and NAS recommended) to defining the human-intrusion scenario. In a more general sense, NAS acknowledged that establishing the ''rules'' ''requires using the rulemaking process to arrive at a regulatory decision about certain assumptions as part of the standard'' (NAS Report p. 34). The NEA has also recommended exploring the possibility of using a similar stylized approach to address uncertainties in the evolution of the surface environment and the nature of future human actions (''The Handling of Timescales in Assessing Post-Closure Safety,'' pp. 22–23, 2004, Docket No. OAR–2005–0083–0046). This approach would avoid speculation regarding the evolution of the geologic environment at times when the hazards associated with the waste are reduced compared to when the waste is emplaced.

Stylized approaches can be utilized to address associated uncertainties in order to allow consideration of events that are deemed potentially important to performance but whose characteristics are difficult to establish with certainty. There is international consensus that this approach may be used to define assumptions that are too difficult to bound (NEA, p. 22, Docket No. OAR–2005–0083–0046). This approach could therefore be used for the determination of the evolution of the geological environment over long periods. As noted above, this approach is similar to that recommended by NAS, and utilized by EPA in examining human intrusion (NAS Report p. 108). The NAS determined that it was technically infeasible to assess the probability of human intrusion into a repository over the long term. It concluded that it was not scientifically justified to incorporate a myriad of alternative scenarios of human intrusion into a fully risk-based compliance assessment that requires knowledge of the character and frequency of various intrusion scenarios. Accordingly, NAS recommended that we specify in our standards a typical intrusion scenario to be analyzed for its consequences on the performance of the repository. The intent of this ''stylized scenario'' is to avoid non-productive speculation on the forms and frequencies of intrusion that can never be predicted, while

allowing the ''robustness'' of the containment properties of the repository to be evaluated by a scenario that is plausible, and potentially causes some levels of exposure. The same factors must be balanced in considering how to assess key geologic and other features over very long time frames when it is exceedingly difficult to establish exact parameters—or even distributions of parameter values—with any certainty.

The modifications proposed in Section II.C (''How is EPA Proposing to Revise the Individual-Protection Standard to Address Peak Dose?'') would require DOE to project exposures to the RMEI until the time of peak dose and subject them to a compliance determination. The key aspects emphasized at the beginning of this section guide our requirements for the scope of performance assessments both at 10,000 years and over times extending through the entire period of geologic stability. However, their implementation carries different implications for those different time periods, given the nature of uncertainties and the types of events that can be envisioned to occur. To address these implications, we are proposing four provisions that will affect the judgment of compliance when that judgment is extended to periods up to 1 million years. Specifically, we are proposing:

- A separate compliance standard for the peak dose beyond 10,000 years;
- That compliance beyond 10,000 years be demonstrated using the median of the distribution of results;
- That FEPs and scenarios not included in the 10,000-year analysis because of their limited consequence during that period need not be considered in the peak dose calculations;
- That scenarios involving climate change, seismic activity, igneous activity, and general corrosion be explicitly considered in the peak dose calculations.

We have already discussed the peak dose standard and the use of the median to demonstrate compliance (see Sections II.C.3 and II.C.5). The selection of FEPs (including general corrosion) is discussed in detail in Section II.D.2.a (''Consideration of Likely, Unlikely, and Very Unlikely FEPs''). Discussion of climate, seismic, and igneous scenarios is included in Sections II.D.2.b, c, and d, respectively.

1. Performance Assessments Up To 10,000 Years After Disposal

Our 2001 rulemaking established a framework within which DOE would conduct its performance assessments to show compliance with the 10,000-year standard. The previous section touched on various aspects of this framework. Essentially, the performance assessment involves three basic steps: (1) Identify the FEPs and scenarios that might affect the Yucca Mountain disposal system, along with their probabilities of occurrence; (2) examine the effects of those FEPs and scenarios on disposal system performance; and (3) estimate the dose consequences from those FEPs and scenarios, weighted by their probabilities of occurrence. Today's proposal will not affect this framework in any way.

We supplemented this basic framework with two additional provisions. The first, the underlying principle of reasonable expectation, we have discussed in detail in Sections II.A.4 and II.B. The other important provision, touched on in the previous section, establishes the approach to identifying FEPs and scenarios and their probability of occurrence. We specified that FEPs or scenarios with a probability of occurrence lower than 1 in 10,000 over 10,000 years need not be considered in the performance assessment. FEPs or scenarios with a higher probability of occurrence also need not be considered if they would not significantly change the results of the performance assessment. We are not proposing to alter this provision as it applies to the 10,000-year standard. The standards in 40 CFR part 191 (the EPA regulation that addresses geologic disposal generically) also used this formulation as the means of determining FEPs for any prospective disposal system. In developing 40 CFR part 197 in 2001, the Agency determined that there was no reason, on a site-specific basis, to depart from this conservative screening criterion. We also note that NAS endorsed this same probability level in its specific discussion of volcanism, and suggested that such a level ''might be sufficiently low to constitute a negligible risk [of occurrence]'' (NAS Report p. 95). Probabilities below this level are associated with events such as the appearance of new volcanoes outside of known areas of volcanic activity or a cataclysmic meteor impact in the area of the repository. We believe there is little or no benefit to public health or the environment from trying to regulate the effects of such very unlikely events.

2. Performance Assessments for Periods Longer Than 10,000 Years After Disposal

As discussed in the previous sections, we do not believe that DOE's performance assessments need be changed fundamentally to accommodate an extended compliance period. The general framework described in the previous section applies equally well to periods beyond 10,000 years, although we are proposing specific provisions to apply to this longer period. We recognize, however, that there may be some confusion regarding the conduct of assessments to demonstrate compliance at two different times. DOE will not necessarily conduct one set of assessments to show compliance with the 10,000-year standard, and a separate set of assessments to show compliance with the peak dose standard applicable at times beyond 10,000 years. Rather, DOE's overall approach could be to run its dose assessments from the time of facility closure to the end of the period of geologic stability (1 million years after closure). The FEPs and scenarios selected for each individual run would continue to operate, and the disposal system to evolve, over that entire time period. DOE would extract the results necessary for comparison with our regulatory standards.

As it is with the 10,000-year standards, the main purpose of the post-10,000-year standards is to provide a reasonable test of the performance of the disposal system. The NAS stated it another way: ''The challenge is to define a standard that specifies a high level of protection but that does not rule out an adequately sited and well-designed repository because of highly improbable events'' (NAS Report p. 28).

In formulating our approach to an extended compliance period, we began by reviewing the NAS report. NAS concluded that several gradual and episodic natural processes or events have the potential to modify the properties of the repository and the processes by which radionuclides are transported. NAS concluded that the probabilities and consequences of modifications generated by volcanic eruptions (volcanism), seismic activity, and climate change are sufficiently boundable so that these ''modifiers,'' as it termed them, can be included (along with an undisturbed scenario) in performance assessments that extend over the expected period of geologic stability (on the order of 1 million years) in the Yucca Mountain region (NAS Report p. 91). NAS considered the ''long-term stability of the geologic environment at Yucca Mountain'' to describe the situation where geologic processes such as earthquakes (and similar physical and geological processes that could affect the performance assessment at the Yucca Mountain site) are sufficiently quantifiable and the related

uncertainties boundable that the performance can be assessed (NAS Report p. 67). Furthermore, NAS acknowledged that, conceptually, there is a need for screening criteria to distinguish significant FEPs from those that can be considered to have negligible effects (NAS Report, for example, pp. 59, 61, 72, 95, 98). NAS suggested that certain levels (including a probability cut-off of 10^{-8} per year) might be appropriate, but made no recommendation on this issue.

We believe the three categories of FEPs identified by NAS deserve special attention. We will require that DOE consider these FEPs in its long-term projections. However, we are proposing to apply the same overall probability threshold and handle such events in a stylized manner to address only their most significant effects. In essence, DOE must include such FEPs in the peak dose assessment, but need not assess in detail every conceivable variation on those events. Thus, our approach would require that DOE develop reasonable igneous, seismic and climate change scenarios and assess the most likely and significant impacts, with appropriate variability in its assumptions, on dose projections. The NAS did not identify any other ''modifiers'' that it expected could be addressed in a quantitative risk assessment covering the period of geologic stability. In addition, NAS specifically mentioned potential effects of these modifiers, but also noted that, while possible, many of these effects would be so unlikely or limited that they would not be expected to significantly affect disposal system performance (NAS Report pp. 91–95). These igneous, seismic, and climatological FEPs are discussed in more detail in the following sections. We propose to specify certain significant aspects or characteristics of the event or process to which DOE may limit its analyses, and DOE will assess reasonable variations within those bounds, considering such basic assumptions as severity and time of occurrence. DOE must then evaluate the consequences on the disposal system and resulting impacts to the RMEI. By varying the time of occurrence within the probability framework, DOE can also address the effects of these FEPs on the peak dose.

Having identified particular natural FEPs that should be considered throughout the period of geologic stability, we then considered whether there are FEPs affecting the engineered barrier system that should also be identified. In reviewing DOE's published TSPAs and other relevant information, we conclude that general corrosion of the waste packages has been shown to be a potentially significant failure mechanism at times in the hundreds of thousands of years (Yucca Mountain Science and Engineering Report, DOE/RW–0539, Section 4.2.4, May 2001, Docket No. OAR–2005–0083–0069). Unlike certain other corrosion processes, as discussed in the next section, which may be more likely or faster-acting at earlier times, general corrosion may not be a significant factor within 10,000 years and could potentially be removed from consideration at those times because of its limited consequence. Were we simply to state that FEPs not included in the 10,000-year analyses should not be included in the post-10,000-year analyses, there might be some question as to whether DOE would need to consider general corrosion at all. We believe it has been shown potentially to be of sufficient importance that it should be included in those projections. Therefore, we are proposing to remove any ambiguity by specifying that DOE must consider general corrosion in its projections throughout the period of geologic stability.

In general, we continue to believe that it is reasonable to require DOE to exclude from performance assessments those FEPs whose likelihood of occurrence is so small that they are very unlikely, or whose consequence is minimal, as described above. We propose that this probability threshold as expressed in our 2001 rule for the 10,000-year compliance period be extended throughout the entire period to peak dose (*i.e.*, FEPs included in the 10,000-year assessments are included in the assessments beyond 10,000 years), but with the inclusion of the long-term impacts of seismicity, volcanism, and long-term climate change, as consistent with the probability screening criteria described herein (NAS Report p. 94). These are the natural events and processes that NAS determined were reasonably boundable when compliance time frames at Yucca Mountain are extended out to the period of geologic stability. We also propose that DOE must consider the long-term effects of general corrosion on the engineered barriers, particularly on waste package integrity. This is an extremely inclusive standard. It captures significant events in the life of the repository, and yet is not so restrictive that no repository could ever pass, given that there would be no limit to the speculation of scenarios that could occur during the period of geologic stability.

As discussed further in the following sections, we have examined a variety of events and feel confident that the screening analysis for 10,000 years—with the assurance that seismic, igneous, climate change, and general corrosion scenarios are included—includes the appropriate range and severity of FEPs to also serve as a reasonable test of disposal system performance throughout the period of geologic stability. We have not (and have not claimed to) conducted an exhaustive or detailed analysis of variations or permutations of scenarios out to the time of peak dose. In fact, this is precisely the sort of unrestrained and speculative exercise we wish to avoid. We recognize that some commenters may believe it is appropriate to consider whether further analysis or new data could reveal that an event excluded from the 10,000-year screening is important to performance of the disposal system over the geologic stability period. As discussed later, we do not believe such scenarios are either very likely or very important to performance. Nor do we believe that this approach inappropriately constrains NRC, as the licensing authority. Rather, we consider this approach to be consistent with the NAS position that conducting compliance assessments ''requires using the rulemaking process to arrive at a regulatory decision about certain assumptions as part of the standard'' (NAS Report p. 34).

a. Consideration of Likely, Unlikely, and Very Unlikely FEPs

Our individual-protection standards (§ 197.20) as promulgated in 2001 required DOE to consider in the performance assessment FEPs with a one in 10,000 or greater chance of occurring during 10,000 years. FEPs below this probability threshold are considered ''very unlikely'' and can be discounted based on probability alone. We also allowed NRC and DOE to remove from consideration FEPs with a higher probability if their effects on performance assessment results were determined to be insignificant. In addition, performance assessments conducted to show compliance with the human-intrusion and ground-water protection standards may exclude FEPs considered ''unlikely.'' We specified that NRC was to determine the probability below which FEPs would be considered unlikely. NRC set that figure at a probability of occurrence of 1 in 10 over 10,000 years (equivalent to an annual probability of 10^{-5}) (67 FR 62634, October 8, 2002, Docket No. OAR–2005–0083–0059).

In extending the period of compliance, we must consider whether our threshold for probability screening

of ''very unlikely'' FEPs remains appropriate. We believe it does, and are proposing to retain it for the extended compliance period. While we are retaining the compliance standard of 150 μSv/yr (15 mrem/yr) applicable to 10,000 years, we are also proposing to introduce a second compliance standard of 3.5 mSv/yr (350 mrem/yr) for the peak dose beyond 10,000 years, which could potentially apply up to 1 million years. This may lead some commenters to suggest that the formulation for FEPs screening should simply be extended by two orders of magnitude, *i.e.*, that very unlikely FEPs would have less than a one in 10,000 chance of occurring over 1 million years. This would recognize that very low-probability FEPs would become more likely to be seen simply with the passage of time (essentially by looking at many 10,000-year periods, the cumulative probability, rather than annual probability, would be increased). However, in our view, such a formulation would be unjustified and unreasonable.

It is important to consider the real meaning of these probability thresholds. A FEP screened in at the existing lower probability threshold would have only a 0.01% chance of occurring through 10,000 years, yet still must be included in the FEPs considered for the performance assessment. We question, then, whether the effort involved in incorporating even less likely events into the ''FEP pool,'' with the level of speculation likely to be attached to them, would be rewarded with even minimal contribution to safety.

The threshold for very unlikely events suggested by NAS was an annual probability of 10^{-8} (1 in 100 million per year), which NAS equated to 1 in 10,000 over 10,000 years, stating that this level ''might be sufficiently low to constitute a negligible risk'' (NAS Report p. 95). We consider these two expressions to be functionally equivalent (and have explicitly included both in our proposal today), but adopted the latter as more clearly tied to the 10,000-year compliance period. Even though the NAS statement above was referring to volcanism, we believe that this probability threshold is a generic consideration that is applicable to any risk at Yucca Mountain, not just volcanism. If one extends the time period of the assessment to 1 million years, a FEP at this level would still have only a 1 in 100, or 1%, chance of occurring within that time, but would still be considered in the performance assessment process. We believe this is a ''cautious, but reasonable'' level, especially when considering the confounding effects of uncertainties at such long time periods. In fact, we are unaware of any international precedents for scrutinizing FEPs of this low probability. Thus, we are proposing to retain the 10^{-8} annual probability threshold for very unlikely FEPs for both the 10,000-year and post-10,000-year assessments.

Application of this screening criterion deserves some additional discussion. For FEPs involving the natural barrier, an annual probability of 10^{-8} theoretically indicates that to compile a definitive list of all FEPs involving the natural barrier, the geologic record at the site would have to be examined back to a time frame of 100 million years to identify FEPs that would be projected to occur at least once in that time period. For the Yucca Mountain site, the volcanic rocks containing the repository are only on the order of 10 million years in age, indicating that essentially any FEP that could be identified in the geologic record during the 10 million year time frame would have an annual probability higher than 10^{-8}, and would be included in the list of FEPs for scenario construction. We believe that the Quaternary period, extending back approximately 2 million years, is a sufficiently long period of the geologic record to allow DOE to make reasonable estimates of natural FEPs (*see* 66 FR 32100). Observed FEPs from that period, as well as other that can be inferred, would be included in a 10^{-8} cut-off.

For FEPs involving the engineered barrier, a similar logic applies. However, the ''record'' to be examined to identify FEPs for the performance of man-made materials and systems is much shorter than the geologic record. Application of the 10^{-8} annual limit ensures all relevant FEPs are considered for inclusion. For example, corrosion processes for which there is accelerated testing and analog information at longer time frames, could still be included in scenario development. Even when such processes would have a low probability, the conservative probability cut-off threshold would still assure they are considered in scenario development. For such processes, however, when probabilities of occurrence over long times may be difficult to assign, the decision to consider them may be based solely on consequence.

By contrast, were we to stretch the probability threshold by two orders of magnitude, to an annual probability of 10^{-10} (one in 10 billion per year), we would be introducing an unprecedented level of conservatism into the performance assessments. At such a level, the performance assessment would be required to consider geologic events likely to have never happened, since the age of the Earth itself is estimated at about 4.5 billion years (*http://pubs.usgs.gov/gip/geotime/age.html*). Further, an event of this annual probability will not reach even a 50% cumulative probability for another 500 million years (a total of 5 billion years), or 500 times the period of geologic stability at Yucca Mountain (defined by NAS as on the order of 1 million years). A probability threshold at that level would sweep in cataclysmic volcanic and seismic events, as well as meteor impacts of the type that extinguished the dinosaurs 65 million years ago. We simply find it inconceivable that such events could be considered a reasonable test of the repository, or that requiring them to be analyzed would provide any benefit to public health and safety. To look at it another way, an event at our current probability threshold of one chance in 100 million per year would still be likely to occur only a few times over an incremental 500 million year period, and roughly 50 times over the entire history of the earth, of which humans have been present only 0.0001% of the time. Examining the geologic record at the Yucca Mountain site for such a time period to identify FEPs would not be meaningful. Even looking at the geologic record with the 10^{-8} probability is challenging. In fact, the volcanic rocks that contain the repository were formed by very extensive volcanism over an area of thousands of square kilometers. Using the annual probability figure alone, it can be argued that such extensive volcanism should be included in the list of FEPs for the performance assessment. We strongly disagree. As emphasized by NAS, we reasonably must confine ourselves to assessing performance of the existing geologic setting. To remove such extreme assumptions, we addressed this particular difficulty by recommending the geologic record through the Quaternary (a period of approximately 2 million years) as the basis for identifying FEPs for the performance assessment (66 FR 32100). Based on this period as compared to the probability threshold we have established, DOE must consider for its performance assessments events that can be shown or reasonably inferred to have occurred during the Quaternary, based on the physical conditions of the site and disposal system.

If the same probability threshold applies at all times, as we are proposing, then the FEP screening performed by DOE for its 10,000-year projections would be expected to adequately represent those longer time periods. We

believe it will, and do not believe it should be necessary for DOE to re-examine its results to ''screen in'' FEPs it has previously analyzed and rejected, or FEPs that might be expected to be more probable at longer times, if such exist. Further, our view is that it would be an endless task for DOE to analyze every FEP postulated to occur several hundred thousand years into the future, simply because a scenario can be invented to support it. Even if DOE were to exhaustively pursue each nominated FEP, their effects are likely to be minimal at best, especially when considering what are likely to be the much larger effects of increasing uncertainties and large-scale scenarios such as climate change. It should be clear, however, that FEPs selected for the analysis will continue to unfold as the assessment continues, up to 1 million years. That is, for all FEPs included in the 10,000-year analysis, DOE must project the effects of these FEPs continuing to evolve over the course of the period of geologic stability, and account for their contributions to the peak dose.

If we are starting from the basic screening for 10,000 years, it is reasonable to examine the reasons why FEPs might have been excluded from that screening when considering whether any warrant further evaluation in the post-10,000-year performance analysis. We see three general categories of FEPs (as opposed to the more specific seismic, igneous, and climatic FEPs, which are addressed separately in the following sections of this document) that may have been eliminated from the full analysis:

FEPs Screened Out by Probability

The first category consists of FEPs determined to be ''very unlikely'' to occur. As described above, these are FEPs that would have a chance of occurrence of less than one in 10,000 over 10,000 years, or an annual probability less than 1 in 100 million (10^{-8}). We see no reason to re-consider FEPs removed from the assessment based on this criterion. Such a FEP would have to be more likely to occur at some time in the future than it is now. This does not simply mean that the cumulative expectation of an event or process having already occurred is higher as time extends from 10,000 to 1 million years, which would be the case for any low-probability FEP; rather, it means that the probability itself would have to be higher at some later time (for example, 10^{-9} annual probability until year 50,000, then a 10^{-8} probability thereafter). We have not identified natural FEPs that would be very unlikely for the first 10,000 years, but would rise above that threshold within the period of geologic stability (FEPs whose probability of occurrence is related to the condition of the engineered barrier system are discussed later in this section). It may be argued that a FEP may become more likely if certain other FEPs have altered the site's characteristics in a particular way. As a basis for requiring additional FEP screening, we would find such a claim to be unreasonable and highly speculative. FEP probabilities are derived in large part from examinations of the historic geologic and climatic record going back millions of years. We suggested that the Quaternary period might be an appropriate benchmark for such an examination (66 FR 32100). Probabilities derived from such evaluations are not amenable to that level of fine-tuning. Furthermore, DOE has currently included FEPs which are at the boundary of the 10^{-8} threshold, such as volcanic events (estimated at 1.6×10^{-8}). We would not view such an exercise as useful or of value in the licensing process. We do not believe it is necessary or appropriate for NRC to re-consider the probability criterion.

FEPs Screened Out by Consequence Within 10,000 Years

Our 2001 standards allow NRC to eliminate FEPs whose effects would not significantly change the performance assessment results within 10,000 years. We are proposing today to take the same approach to the peak dose projections, giving special attention to changes to the magnitude of the peak dose. There is no reason for DOE to re-consider FEPs for their effects on the 10,000-year projections, and we are aware that some FEPs have been included whose effects are manifest at times slightly beyond 10,000 years to give perspective on the shorter-term evolution of the disposal system, such as slower-acting corrosion mechanisms.

At issue, then, would be FEPs whose effects might not be evident or as prominent until several tens or hundreds of thousands of years have passed. Such FEPs might be considered to be either gradual, continuing processes or episodic, disruptive events and processes. In general, we believe that the 10,000-year assessments should adequately address the more gradual processes and that the more significant of those processes have been included in those assessments (for example, infiltration of water through the repository and the processes leading to early failure of waste packages heavily influence the 10,000-year assessments and would do the same for peak dose projections). By the time those more gradual processes would take effect, it is likely that the effects of other processes would already be felt at a much higher level. One fundamental purpose of probabilistic performance assessment is to give proportionate emphasis to highly improbable events and processes. With one exception (discussed below), we find it unlikely that any gradual, continuing processes not already included through the screening for the 10,000-year assessments under our proposed rule could significantly affect the projections over such long time periods. It is more likely that their effects would be overwhelmed by other, higher-probability (or faster-acting) processes operating over the same period.

The single such slow-acting process we have decided to include in today's proposal is general corrosion of the engineered barriers, particularly its effects on the waste packages. We recognize that DOE has included general corrosion in its previous analyses for both the 10,000-year period and over the longer term. However, even though general corrosion is significant to performance at longer times, it might reasonably be considered insignificant within the first 10,000 years and could, thus, be screened out of the analysis to demonstrate compliance with the 10,000-year standard. Under our overall approach, were DOE to exclude general corrosion on the basis of consequence within the first 10,000 years, longer-term projections could also exclude this factor. We think such an exclusion over the period of geologic stability would ignore a crucial factor in long-term performance at Yucca Mountain. As we have noted, DOE's own analyses point to general corrosion as the dominant waste package failure mechanism, either alone or in combination with disruptive events (igneous events are assumed to be less dependent on prior degradation of waste packages). Without general corrosion assumed to act, a large proportion of the waste packages could be assumed to remain intact even up to or beyond 1 million years. Other corrosion mechanisms, such as localized corrosion, are highly correlated with temperature and would be expected to operate early in the assessment period, when temperatures inside the repository are likely to be very much higher. Stress-corrosion cracking is another mechanism that is somewhat correlated with temperature, but is of more importance in situations involving mechanical failure, such as rockfall resulting from seismic events. Their longer-term impact is likely to be

greatly reduced after the repository cools. The same is not true for general corrosion. The rate of general corrosion is somewhat influenced by temperature, but this process is expected to continue even when the temperature is lower. Our proposed approach would eliminate any questions regarding whether general corrosion should be considered for the longer-term assessments.

Although general corrosion was not called out by NAS, as were the three natural FEPs, we believe this approach to general corrosion is consistent with NAS's overall expectations for the evolution of the disposal system. We have already discussed in the context of uncertainty NAS's expectation that a significant proportion of the waste packages would fail over the period of geologic stability and that, while peak doses might occur much later, significant releases could be anticipated within the first 10,000 years (see Section II.A.5, ''Effects of Uncertainty''). For example, NAS suggested that some uncertainties will be lower ''when enough time has passed that all of the packages will have failed'' (NAS Report p. 29–30); that ''uncertainties in waste canister lifetimes might have a more significant effect on assessing performance in the initial 10,000 years than in performance in the range of 100,000 years'' (NAS Report p. 72); that ''[d]etailed estimates of time for canister failure are less important for much longer-term estimates of individual dose or risk'' (NAS Report p. 85); and that ''[i]nflow of air through failed canisters and oxidation of waste prior to infiltration of water * * * would probably affect estimates of 10,000-year cumulative releases more than estimates of longer-term doses and risks'' (NAS Report p. 86). Further, NAS clearly identified corrosion as the dominant process leading to waste package failure and recognized its importance in projecting peak dose: ''Radionuclide releases from an undisturbed repository * * * can occur through * * * degradation and failure of the waste canister through corrosion'' * * *'' (NAS Report p. 26—see also pp. 68, 82, 85). We also believe our proposed approach to general corrosion is consistent with both NAS's advice to use ''cautious, but reasonable'' assumptions and our principle of reasonable expectation, as general corrosion represents a potentially significant failure mechanism leading to radionuclide releases.

Regarding natural FEPs, we are proposing that DOE explicitly evaluate the effects of seismic, volcanic, and climatological FEPs in its assessments beyond 10,000 years, as discussed in the following sections. It should be understood, however, that these FEPs may also be considered within the 10,000-year period if warranted by probability or consequence. The probabilities of seismic and igneous events beyond 10,000 years will be the same as those probabilities within 10,000 years. Events that DOE judges fall below the 10^{-8} probability threshold need not be included in either the 10,000-year or post-10,000-year assessments. Such events might include seismic episodes above a certain magnitude. There is more certainty that the climate will experience significant changes over the period of geologic stability, and therefore we require it to be considered at all times. The effects of climate change on Yucca Mountain's performance, however, are likely to be minimal within 10,000 years, and potentially more significant at longer times when most of the waste packages are breached.

FEPs Screened Out by Condition of the Engineered Barrier System Within 10,000 Years

We are aware that DOE has identified certain FEPs that were eliminated from consideration within 10,000 years because it was deemed impossible for them to occur while the engineered barrier system remains intact. We believe such FEPs should be considered as a special case, as they depend on the condition of the engineered barrier system rather than a strict probability of occurrence.

The prime example of the FEPs in this category is in-package nuclear criticality. The possibility of this occurring at Yucca Mountain was discounted within 10,000 years on the basis that the waste packages would remain largely intact during that time (although a certain level of premature failures was assumed). DOE stated that ''One of the required conditions is the presence of a moderator, such as water, in the waste package. The waste packages will be designed to make the probability of a criticality occurring inside the waste package extremely small'' (FEIS, DOE/EIS–0250, section I.2.12, p. I–21, Docket No. OAR–2005–0083–0086). At some point beyond 10,000 years, however, packages are anticipated to degrade sufficiently to allow water inside, so the reason for screening out this FEP is no longer credible. We understand that NRC has evaluated this possibility and initial results suggest that the effects would not be significant (''System-Level Performance Assessment of the Proposed Repository at Yucca Mountain Using the TPA Version 4.1 Code,'' CNWRA 2002–005, September 2002, Revised March 2004, Appendix G, Docket No. OAR–2005–0083–0067). More recently, NRC staff analyses regarding the potential effects of a criticality event within the waste package indicated that the effects would be more significant within the first 10,000 years after disposal than at longer times (''Estimating In-Package Criticality Impact on Yucca Mountain Repository Performance,'' International High Level Radioactive Waste Management Conference, Las Vegas, Nevada, March 30–April 2, 2003, Docket No. OAR–2005–0083–0082). Therefore, we do not require that DOE consider in-package criticality beyond 10,000 years if it has not been considered for the first 10,000 years. To the extent DOE's waste package assumptions make such a scenario credible within the initial 10,000 years, however, it would be appropriate to include it in the post-10,000-year projections.

There may be other FEPs that fall within this category. However, this illustrates the very possibility we wish to avoid. It is possible to generate complex and vaguely-defined circumstances and insist that DOE analyze them thoroughly. We see such an exercise as being of no value. Rather, we believe it would be detrimental to the licensing process, as well as contrary to our ''reasonable expectation'' concept and the idea that performance assessments should represent credible projections of disposal system safety.

Having considered the various types of FEPs that may have been excluded from the 10,000-year analysis, our goal is to require an appropriate consideration of FEPs in the analyses beyond 10,000 years. We considered an approach that would provide NRC with broader flexibility to consider previously excluded FEPs that it believes should be included in the peak dose analyses, perhaps based on the effect of the FEP on the magnitude of the peak dose. However, we believe that any potential FEPs to be included are likely to be overwhelmed by increasing uncertainties or larger-scale FEPs such as climate change. For this reason, we do not believe the inclusion of such FEPs will add materially to the understanding of the disposal system's performance or will lead to a safer disposal system. Furthermore, as stated earlier, we are guided by our reasonable expectation principle in not requiring an exhaustive and completely accurate prediction of repository conditions over a million-year period. See Sections II.A, II.B, and II.C for discussions of the

relative confidence in calculations at very long times, and the need to view those calculations in a more qualitative way. We aim to construct a reasonable test of the disposal system that accounts for the possible occurrence of significant FEPs at Yucca Mountain, and the system's response to those stresses. We believe that proposing the continued exclusion from peak dose calculations of events that are inconsequential for 10,000 years, with the exception of general corrosion and those identified by NAS, is consistent with this approach.

To summarize our proposal for § 197.36, we propose that DOE continue to use the FEPs selected for compliance with the 10,000-year projections in its projections for peak dose. This does not require that DOE continue to define the characteristics of those FEPs in exactly the same way it has previously (for example, in the FEIS). Rather, DOE may continue to refine its representation of FEPs in the analyses as its understanding of the factors involved improves. The contribution to dose estimates of FEPs selected for the analyses must be assessed throughout the period of geologic stability. We do require that DOE explicitly consider the effects of seismic, igneous, and climate change scenarios, within the overall probability constraints, as described in more detail in the following sections. We also require that DOE consider the effects of general corrosion throughout the period of geologic stability. We have considered two approaches for doing so. Under the first approach, consistent with our approach to climate change outlined in Section II.D.2. DOE may apply a constant representative corrosion rate throughout the period of geologic stability. Under the second approach, consistent with our approach to seismic and igneous FEPs outlined in Sections II.D.2.b and c, DOE may apply corrosion rates as derived for the 10,000-year period, which may be dependent on other factors, such as temperature within the repository.

We have stated our concerns that the screening process should not be used to put forward highly speculative and implausible situations for DOE to analyze. It is our belief that the relevant FEPs are already captured within the 10,000-year screening process, and that any others would be overshadowed by other aspects of the longer-term modeling. We believe our proposal to explicitly include certain FEPs important to the longer-term projections appropriately balances these considerations. We request comment on this approach.

b. Consideration of Seismic FEPs

The NAS stated, and we agree, that the effects of seismicity in the area on (1) the repository and (2) the hydrologic regime are key aspects to be considered during the period of geologic stability (NAS Report p. 93). The effects of seismicity may result in (most significantly) early waste package failure, an increase or decrease in conductivity (movement of water) in the saturated or vadose zones, or a shift in direction of fluid movement in the area (NAS Report pp. 92–93). In addition, we believe the potential effects of seismic activity on the structural stability of the repository itself (*i.e.*, drift collapse) may be important in projecting the failure of waste packages.

In order to reasonably assess the effects of seismicity at the site, and yet also address the increasing uncertainty associated with magnitudes of seismic events over the greatly increased time period, we expect that DOE will take the rate of occurrence of seismic events originally derived for the 10,000-year time period and extend the calculations throughout the period of geologic stability. We are proposing that DOE may limit its assessment of seismicity to the effects on the disposal system of drift collapse and waste package failure, *i.e.*, effects on the engineered barriers that comprise an essential component of the disposal system. At times sufficiently far into the future, a wide range of possibilities could be proposed, and some (for example, an earthquake of such an extreme magnitude that it collapses all the drifts of the repository, allowing for complete destruction of the facility), no matter how remote the probability, could have far-reaching implications for the disposal system. By using this approach, we can adhere to the basic premise that the risk calculations reasonably predict the geologic environment at the repository out to peak dose. We can also capture the potential effects of seismicity and faulting at Yucca Mountain. By extending the performance period to 1 million years, it is expected that more events will occur, consistent with the established seismic hazard curve for the site. No new types or classes of seismic or fault displacement disruptive events can reasonably be anticipated. In the case of seismicity, earthquakes are most likely to occur on the existing network of active seismogenic fault sources under current tectonic conditions. In the case of the fault displacement hazard, it is more likely that fault slip will occur on existing faults that on newly created ones.

DOE has developed a seismic hazard curve that describes the seismicity to be expected at the site (''Seismic Consequence Abstraction,'' MDL–WIS–PA–00003–Rev 00, 2003, Docket No. OAR–2005–0083–0073). A seismic hazard curve determines what the probability is of any particular strength of ground shaking. The goal of probabilistic seismic hazard analysis is to quantify the rate (or probability) of exceeding various ground-motion levels at a site (or a map of sites), given all possible earthquakes. It is reasonable to assume that seismic events will continue with activity rates and magnitudes predicted by the seismic and fault displacement hazards for the site over the period of geologic stability because the geologic record indicates relative tectonic stability of the region over the past 10 million years. This implies that there is continuity in the behavior of major geologic events (such as earthquakes) over that entire time frame. Further, the geologic record extending back millions of years has been used to establish the hazard curves. There is not further data that appropriately can be incorporated into the analysis, or used to justify an adjustment of the estimates simply because they are to be projected further into the future. It is expected that more events, such as earthquakes and fault displacements, will occur with the extended performance period, but that these events are much more likely to occur on existing faults and seismic sources than on newly created ones. Therefore, the rates and magnitudes considered in the probabilistic calculations for 10,000 years can also be used to generate estimates of seismicity out to the period of peak dose. These events should be defined on an annual probability of occurrence. The magnitudes and frequencies of potential seismic events should remain the same as in the 10,000-year analysis; however, the analysis would be expected to show greater consequences as potentially more major seismic events are incorporated into the assessment as a result of extending the analysis throughout the period of geologic stability as events occur at times when packages are expected to be largely degraded and thus more easily damaged.

The NAS stated that seismologic effects on the hydrology at Yucca Mountain can also be bounded over the period of stability due to the fact that the hydrology has been influenced by many similar seismic events in the past (NAS Report p. 93). Seismic activity can account for a number of changes in the

hydrology of the area, from the opening or closing of fractures and large-scale changes in water levels to a shift in the direction of ground-water flow in the region. It could also increase the potential for enhanced movement of the radionuclides in the waste, because the potential for increased rate of water movement could contribute to a greater velocity of the ground water in the aquifer, which could reduce the travel time of radionuclides out to the boundary of the controlled area. However, we are proposing today that DOE's analysis for seismic events may exclude the effects of seismicity on the hydrology of the Yucca Mountain disposal system. In making this decision, we considered the NAS's guidance as well as the relative effects of climate change on the hydrology of the disposal system.

In its report, NAS observed that seismicity potentially can affect the hydrologic regime by causing displacements and increasing conductivity along existing fractures. NAS noted that such displacements are likely to occur along existing fractures (as opposed to creating new ones) and, further, that hydrology near Yucca Mountain ''has been conditioned by many similar seismic events over geologic time'' (NAS Report p. 93). Since no major new flow paths would be created, these statements imply that the most likely hydrologic effects are changes in conductivity or a localized shift in the ground-water flow. Nevertheless, NAS concluded that ''such displacements have an equal probability of favorably changing the hydrologic regime'' (NAS Report p. 93). We agree, and also conclude that predicting the magnitude of changes in hydraulic conductivity—whether favorable or unfavorable—or the details of localized changes in the direction of ground-water flow is highly speculative, especially in view of the highly fractured nature of the geology at Yucca Mountain.

However, we also agree with NAS that ''the effect of seismicity on the hydrologic regime could probably be bounded'' (NAS Report p. 93). The endpoint of most concern resulting from changes in flowpaths or hydraulic conductivity would be the potential for greater movement of water through the disposal system. As previously mentioned, this could enhance movement of radionuclides from the waste. Importantly, this is also the endpoint of concern for climate change scenarios. As discussed in more detail in Section II.D.2.d, we are proposing that DOE must consider climate change scenarios that result in an increased flow of water through the disposal system. Unlike seismic events, such climate change scenarios do not have the potential to favorably affect (*i.e.*, reduce) the ground-water flow through the disposal system (at best, they would have a neutral effect on overall performance). In addition, the effects on water flow from climate change would be expected to exceed any such effects resulting from seismicity. Thus, we believe that our proposed requirements for DOE to consider climate change over the period of geologic stability effectively bound the potential hydrologic effects and no further analysis is required separately as part of the seismic scenarios.

In contrast, the potential effects on waste package failure through physical impact with other elements of the engineered barrier system or drift collapse (rockfall) are not clearly captured in analyses of other scenarios. Waste package failure is generally of importance because it is the immediate step allowing water to contact the waste, leading to release of radionuclides. Waste packages may be more vulnerable to seismic effects if corrosion processes have weakened them. Seismic events may cause the failure of the structures supporting the waste packages, allowing them to be physically damaged through impacts with other objects (*i.e.*, if waste packages are no longer held in place, they could collide with other packages or elements of the engineered barrier system). The collapse of the emplacement drift itself could also be significant at these longer times as pieces of rock fall onto the already-weakened waste packages. Regarding waste package failure caused by seismicity, NAS concluded that the rocks in the Yucca Mountain area are so extensively fractured that future seismic events are likely to occur along existing fractures rather than new ones (NAS Report p. 93). By knowing the location of major fractures, DOE may be able to minimize the adverse effects of seismicity. For example, DOE can place waste packages away from these areas (fault avoidance), thereby decreasing the risk of failure by seismic induced rock falls. As can be seen by examples at the Waste Isolation Pilot Plant (WIPP), engineering practices at repositories can be successful in reducing the probability of adverse effects on isolation capabilities and DOE has criteria for such practices at Yucca Mountain. Because faults are being avoided by design, we do not believe DOE must assume they are not. In the end, DOE might be able to show that seismic effects on waste package failure ''could be reduced sufficiently to result in boundable and probably very low risk,'' as postulated by NAS (NAS Report p. 93). Our proposal would require that DOE specifically address waste package failure resulting from seismic events causing damage to the engineered barrier system, either through physical impacts within the drifts through failure of the supporting structures or drift collapse so that the significant effects identified by NAS will be fully considered.

There are other effects that can be envisioned from seismic events near Yucca Mountain. Beyond the key aspects of seismicity discussed above, however, we do not believe there are others that would be expected to significantly affect performance (for example, from events that are of low magnitude or sufficiently distant from the disposal system), and NAS similarly identified none. The consideration of such effects would unnecessarily complicate the development of the performance assessment and the licensing process without contributing information on the protective capabilities of the Yucca Mountain disposal system. We believe they can reasonably be excluded from analysis over the period of geologic stability.

Therefore, in conclusion, we propose that DOE evaluate the effects of seismic activity throughout the period of geologic stability, but limit those effects to those resulting in damage to the engineered barrier system and ultimately the waste packages. The probability of seismic events of different magnitude and duration for the period of geologic stability will be the same as determined for the period within 10,000 years. We request comment on this approach.

c. Consideration of Igneous (Volcanic) FEPs

EPA recognizes that a volcanic intrusion into the repository, although an unlikely event, could release a portion of the radioactive inventory. We agree with the NAS that this possibility exists over the period of geologic stability (NAS Report p. 94). While acknowledging the complexity of the release of radionuclides from the repository, given the known effects of the various types of past volcanic events and the study of the cinder cones in the area, we believe it is possible to develop reasonable estimates of the probability of radionuclide release via volcanic episodes through the repository through the period of geologic stability.

We agree with NAS that the probability of igneous events may be great enough, and the potential

consequences significant enough, that they must be considered over the period of geologic stability. An analysis of the probability is based on extrapolations into the future of volcanic activity from the geologic record, and on assumptions about the spatial distribution of future volcanic eruptions in the Yucca Mountain region. Volcanism by nature is an episodic event. In the Yucca Mountain region it has been characterized as involving intermittent concentrated activity followed by long periods of quiescence (NAS Report p. 94). For example, the repository block tuffs are in the age range of approximately 11–12 million years old and were generated by large-scale volcanism involving a large area around the site (''Site Environmental Report for the Yucca Mountain Project Calendar Year 2003,'' PGM–MGR–EC–000005–REV 00, Section 1.1, October 2004, Docket No. OAR–2005–0083–0086). This material is made of layers of ashfalls from volcanic eruptions that consolidated into the rock (of a type known as ''tuff''). Tuff has varying degrees of compaction and fracturing depending on the degree of ''welding'' caused by temperature and pressure when the ash was deposited. An event of this nature is not likely to be repeated during the geologic stability period. It has been suggested by NAS, and fits within our FEPs screening, that a probability of 10^{-8}/yr, which is a 1 in 10,000 possibility of a disruption (affecting the repository, not simply a volcanic event in the region) over 10,000 years ''might be sufficiently low to constitute a negligible risk'' (NAS Report p. 95). Based on available information generated by DOE in its TSPA (Yucca Mountain Science and Engineering Report, DOE/RW–0539, Section 4.4.3, May 2001, Docket No. OAR–2005–0083–0069), the mean annual probability of an igneous event within the Yucca Mountain repository footprint is estimated at 1.6×10^{-8} per year (which is slightly higher than a one in 10,000 possibility of a disruption over 10,000 years). This probability, though extremely low, is just within the regulatory threshold for inclusion of events with very low probability of occurrence, but it can be assumed that this probability will hold throughout the period of geologic stability (NAS Report p. 94). For this reason, we are proposing to require that DOE include consideration of igneous FEPs extending over the period of geologic stability.

We also agree with NAS that reasonable estimates of the effects can be developed (NAS Report p. 95). As with the seismic FEPs, we believe this is best accomplished by limiting the analysis to those effects most significant for performance. As we stated in our 2001 rule, the geologic record is the best source of evidence for the frequency and magnitude of natural features, events, and processes that could affect repository performance, and the geologic record is best preserved in the relatively recent past (66 FR 32100). Studies of the volcanic history of the area in the recent past indicate a different type of volcanic activity other than the intermittent layering volcanic activity that produced Yucca Mountain has occurred (FEIS, DOE/EIS–0250, Appendix I, Section 2.10, Docket No. OAR–2005–0083–0086). Basalt volcanism, exemplified by the Lathrop Wells volcano, and other features near the repository, appears to be the type of igneous activity, though unlikely, that has some probability of occurring within the period of geologic stability. By narrowing the type of events most plausible during the period of stability, we can attempt to constrain the uncertainty involved in using probabilistic analyses. The NAS noted that the most significant effects are related to future events that could intersect the repository (NAS Report p. 94).

Existing DOE calculations provide an example of analysis of such disruptive igneous events. DOE states that, if igneous activity occurred at Yucca Mountain, possible effects on the repository could be grouped into three areas (FEIS, DOE/EIS–0250, Appendix I, Section 2.10, Volcanism, Docket No. OAR–2005–0083–0086):

- Igneous activity that would not directly intersect the repository (can be shown to have no effect on dose from the repository);
- Volcanic eruptions in the repository that would result in waste material being entrained in the volcanic magma or pyroclastic material, bringing waste to the surface (resulting in atmospheric transport of volcanic ash contaminated with radionuclides and subsequent human exposure downwind); or
- An igneous intrusion intersecting the repository (no eruption but damage to waste packages from exposure to the igneous material that would enhance release to the ground water and, thus, enhance transport to the biosphere).

Based on studies of past activity in the region, probabilities for different types of igneous activity have been estimated by DOE. Each type of event was described in detail based on observation of effects of past activities as embodied in the geologic record of the region. These descriptions include geometry of intrusions, geometry of eruptions, physical and chemical properties of volcanic materials, eruption properties (velocity, power, duration, volume, and particle characteristics). Most of the parameters describing the igneous activity were entered in the modeling as probability distributions (FEIS, DOE/EIS–0250, Appendix I, Section 2.10, Volcanism, Docket No. OAR–2005–0083–0086).

DOE's current igneous activity scenario contains two separate possible events: a volcanic eruption that includes exposure as a result of atmospheric transport and deposition on the ground, and an igneous intrusion ground-water transport event. In the volcanic eruption event, a dike (or dikes) would intersect the repository and compromise all waste packages in the conduit. Then, an eruptive conduit of an associated volcano would intersect waste packages in its path. Waste packages in the path of the conduit would be sufficiently damaged that they provide no further protection, and the waste in the packages would be entrained in the eruption and subject to atmospheric transport. In the igneous intrusion ground-water transport event, the analysis calculated releases caused by a dike (or dikes) intersecting emplacement drifts, causing varying degrees of waste-package damage and making the contents of the containers available for transport to the RMEI through ground water. We believe these are the most significant consequences that would result from a volcanic event through the repository. Other results from igneous events—the occurrence of distant events, potential drift instability, or changes in rock fracturing—are secondary to the direct releases of radionuclides. In addition, the response of the disposal system to such effects would likely be captured by consideration of other FEPs (such as seismicity or climate change). Therefore, we are proposing that DOE's consideration of igneous events over the period of geologic stability may be limited to events that intersect the repository, damage the waste packages, and cause releases of radionuclides either directly to the atmosphere and biosphere (*i.e.*, an extrusive event) or to the ground water. We expect that the same probability of occurrence for these events used in the 10,000-year analysis be applied over the period of geologic stability. Using this probability, it is very unlikely that more than one igneous event would be included in a single realization. However, the two types of events are very different in terms of their potential effects and when those effects would be greatest. We

believe this approach is appropriate, as described in the next paragraph.

DOE's analysis of releases from waste packages entrained by magma erupted on the surface assume the waste containers are breached by the eruption itself and the wastes are available for dispersal by the eruption. In this scenario, the doses would be highest if the eruption happened early in the geologic stability period (before significant decay of short-lived radionuclides that provide a dose through inhalation as well as through deposition and uptake by plants), and are lower if the event occurs at later times. Assuming waste packages are breached during the event provides that the assessment is a ''worst case'' in terms of potential doses because it does not depend on assumptions regarding other waste package failure mechanisms, such as corrosion. However, other analyses and laboratory experiments have been presented suggesting that intact waste containers can withstand the temperatures of the molten magma without melting or otherwise sustaining significant damage (''Evaluation of the Igneous Extrusive Scenario,'' Presentation to the Nuclear Waste Technical Review Board, September 20, 2004, Docket No. OAR–2005–0083–0074). These analyses suggest that an early eruption might not produce the highest doses since the wastes could not be dispersed as easily. Under these assumptions, an eruption considerably later in the geologic stability period, when the waste containers have degraded considerably from corrosion processes, is more likely to result in widespread dispersal of the wastes. However, at the later times, the radionuclide inventory in the wastes would have decreased from decay, and projected releases would probably not exceed those estimated for the early eruption scenario DOE performed. The existing assessments of the eruptive event based on our previously issued regulations contain a number of assumptions, which we believe has led to conservative assessments. Under DOE's assumptions, the highest dose as a result of volcanic eruptions would occur within the first 10,000 years because that is when the radionuclide inventory is at its highest. We are not assuming this approach will be retained in all details, and have structured our proposed rule accordingly to ensure that igneous events are considered over the period of geologic stability. However, we acknowledge that the current approach, if retained, would meet our requirements and be conservative. We request comment on our proposal.

d. Consideration of Climatological FEPs

The average of weather conditions over a long period of time is the climate (*www.cogsci.princeton.edu/cgi-bin/webwn*), and it has been well documented that climate can vary significantly over geologic time (NAS Report p. 91). Climate controls the range of precipitation and temperature conditions at Yucca Mountain. There are a number of impacts, particularly on the hydrologic regime, that must be taken into account. Run-on, run-off, and evapotranspiration of precipitation influence the rate of infiltration into the subsurface. The greater the amount of infiltration, or recharge, the greater the potential for an increase in ground water to infiltrate into the repository, allowing for an increase in the dissolution of the radionuclides. This could lead to higher release rates from the waste. Consequently, it is important to examine the effects of climate change throughout the period of geologic stability.

At present the Earth is in an interglacial phase (NAS Report p. 91). Climate change historically has been cyclical: ''Over a million-year time scale, however, the global climate regime is virtually certain to pass through several glacial-interglacial cycles * * *'' (NAS Report p. 91). Similarly, the Yucca Mountain FEIS states: ''The record shows continual variation, often with very rapid jumps, between cold glacial climates (* * * pluvial periods) and warm interglacial climates similar to the present. Fluctuations average 100,000 years in length'' (FEIS, DOE/EIS–0250, p. 5–12, Docket No. OAR–2005–0083–0086). NAS stated the following with regard to climate change at Yucca Mountain:

> During the past 150,000 years, the climate has fluctuated between glacial and interglacial status. Although the range of climatic conditions has been wide, paleoclimatic research shows that the bounding conditions, the envelope encompassing the total climatic range have been fairly stable (Jannik *et al.*, 1991; Winograd *et al.*, 1992; Dansgaard *et al.*, 1993). Recent research has indicated that the past 10,000 years are probably the only sustained period of stable climate in the past 80,000 years (Dansgaard *et al.*, 1993). Based on this record, it seems plausible that the climate will fluctuate between glacial and interglacial states during the period suggested for the performance assessment calculations. Thus, the specified upper boundary, or the physical top boundary of the modeled system, would be a conservative approach that captures the most severe, detrimental performance effects of these variations (especially in terms of ground-water recharge).
>
> (NAS Report pp. 77–78.)

We are concerned about the possibility of over-speculation of climatic change over such extremely long time periods, possibly out to the next 1 million years. The NAS recognized this fact in its report, stating ''Although the typical nature of past climate changes is well known, it is obviously impossible to predict in detail either the nature or the timing of future climate change. This fact adds to the uncertainty of the model predictions' (NAS Report p. 77).

EPA agrees with the NAS statement and takes the position that it is not useful to have unconstrained speculation on future climate during the period of geologic stability, because it is possible to assume any number of scenarios of climate over this large amount of time, and there is very little evidence available to accept or refute most of them. Because it is not possible to predict every situation that could occur over such a long time, we feel that the best course, as outlined below, is to construct a climate scenario that assumes reasonable temperature and precipitation values, and allow this scenario to run throughout the period of geologic stability.

Climate change differs from seismic and igneous events in that its effects would not occur instantaneously, and it can affect multiple portions of the disposal system with a very direct effect on performance since the movement of water through the site is the primary means for transporting radionuclides. These effects can persist for very long time periods, even longer than the period of geologic stability. Seismic events and volcanism, in contrast, are episodic events; though the events occur relatively quickly and deliver their consequences over the short term, the consequences themselves can be very long-lasting and fundamentally change the geologic setting.

There are three major effects that climate change can impart on the disposal system (NAS Report p. 91). The first is that increases in erosion might significantly decrease the burial depth of the repository. NAS pointed out that site-specific studies performed by DOE indicate that an increase in erosion to the extent necessary to expose the repository within the period of geologic stability is extremely unlikely (NAS Report p. 91). Therefore, we do not believe it is important or necessary to require DOE to assess the potential for erosion from climate change.

The second change might be a shift in the distribution and activities of human populations (NAS Report p. 92). A cooler, wetter climate may provide a more hospitable environment,

increasing the population, and (some have argued) possibly changing the parameters we have outlined for the RMEI. We are not proposing to change the definition or characteristics of the RMEI. We have discussed our reasoning for taking this approach in greater detail in Section II.A.1 of this document. We do not believe that fixing the climate to present-day characteristics is the appropriate way to circumvent the difficulties in defining a biosphere applicable for 1 million years. Our view is that evaluation of reasonable climate change is critical to the integrity and meaning of peak dose projections. Further, as NAS noted, ''there is no simple relation between future climatic conditions and future population'' (NAS Report p. 92).

Finally, for extremely long time periods, major changes in the global climate, for example a transition to a glacial climate, could affect ground-water movement. NAS states ''Change to a cooler, wetter climate at Yucca Mountain would likely result in greater fluxes of water through the unsaturated zone'' (NAS Report pp. 91–92). NAS observed that a doubling of the effective wetness (the ratio of precipitation to effective evapotranspiration) could cause a significant increase in recharge (NAS Report p. 91). This could affect the rates of radionuclide release from the waste and transport to the water table, although the location of the repository in the subsurface would provide a time lag for climate change effects. NAS states, ''The time required for unsaturated zone flux changes to propagate down to the repository and then to the water table is probably in the range of hundreds to thousands of years. The time required for saturated flow-system responses is probably even longer. For this reason, climate changes on the time scale of hundreds of years would probably have little if any effect on repository performance, and the effects of climate changes on the deep hydrogeology can be assessed over much longer time scales'' (NAS Report p. 92).

In its current analysis of future climate states (''Future Climate Analysis,'' ANL–NBS–GS–000008–Rev 00, 2000, Section 6.2, Docket No. OAR–2005–0083–0068), DOE assumed that all future climates were similar to current conditions or wetter than current conditions. The climate model provides a forecast of future climates based on information about past patterns of climates. The model represents future climate shifts as a series of instant changes. During the first 10,000 years, there are three changes, in order of increasing wetness, from present-day to a monsoon and then to a glacial-transition climate. Between 10,000 years and 1 million years there are 45 changes between six climate states incorporated in the TSPA model:

- Interglacial Climate (same as present day)
- Intermediate Climate (same as the Glacial-transition)
- Intermediate/Monsoon Climate
- Three stages of Glacial Climate of varying infiltration rates

Precipitation that is not returned to the atmosphere by evaporation or transpiration enters the unsaturated zone flow system. Water infiltration is affected by a number of factors related to climate, such as an increase or decrease in vegetation on the ground surface, total precipitation, air temperature, and runoff. The infiltration model uses data collected from studies of surface infiltration in the Yucca Mountain region. It treats infiltration as variable in the region, with more occurring along the crest of Yucca Mountain than along its base. The results of the climate model affect assumed infiltration rates. For each climate, there is a set of three infiltration rates (high, medium, low) and associated probabilities. This forms a discrete distribution that is sampled in the probabilistic modeling. Whenever a particular climate state is in effect, the associated infiltration rate distribution is sampled for each realization of the simulation.

One of the issues associated with DOE's existing modeling efforts on climate at very long times is that the analysis assumed instantaneous changes between climate states. In other words, the entire flow field was assumed to immediately switch from one climate state to another. This approach is unrealistic because, as noted above, it would likely take hundreds or thousands of years for increased infiltration from a wetter climate to reach the underlying aquifer and affect transport and flow patterns. DOE also assumed that the climate change occurred at the same time for all realizations, which magnified the effect of the instantaneous change of climate when looked at as a probabilistic analysis. The result is that the doses calculated were the product of the conservatism of the assumptions noted above (*e.g.*, instantaneous climate shift, which was assumed to occur at the same time for all realizations). Such assumptions are unlikely to produce meaningful or realistic results.

We believe that an approach should be developed to answer several basic questions about how climatological effects realistically will impact the proposed repository until the time to peak dose. The questions that concern us are:

1. How much total water will infiltrate into the repository over this large amount of time?

2. Will more water infiltrate the repository over time when modeled as a wave function (current DOE modeling) or as total average?

The answers to these questions assist in identifying conservative, yet reasonable, conditions the repository may encounter over the period of geologic stability. The amount of net infiltration into Yucca Mountain has an effect on the disposal system performance because higher net infiltration leads to the possibility that a greater proportion of the repository will experience ground-water seepage. For solubility-limited radionuclides in the waste, an increase in net infiltration could lead to a higher release rate of radionuclides from the disposal system, thereby affecting the potential dose to the RMEI in the accessible environment. We do not believe that it is important to know or predict with certainty precisely when the climate states with peak precipitation occur during the modeling. There are too many uncertainties and permutations available in trying to project a future set of climate conditions, and it is difficult to place specific times on when discrete pulses of precipitation should be injected into the modeling (NAS Report p. 77). Instead, we believe that it is reasonable to assume an average increase in precipitation over the entire time from 10,000 years through the period of geologic stability, and to model those consequences. An increase in average precipitation throughout the period of geologic stability is a more reasonable approach because it assumes a constant source of precipitation, creating more downward flow that will eventually reach the repository. This scenario need not be dominated by highs or lows in precipitation over the time period and does not require speculation about the exact timing or transient effects of shifts in climate. Rather, setting a constant value somewhat higher than today's average annual rainfall and extending it out to the time of peak dose would account for the greater potential for available fluids at the time of the failure of the waste packages. We believe that this approach provides a reasonable test of the repository conditions out to the time of peak dose, and will give a more conservative idea of potential fluid flow, as well as potential for migration of radionuclides out of the repository.

We are proposing today that DOE, based on past climate conditions in the Yucca Mountain area, should determine how the disposal system responds to the effects of increased water flow through the repository as a result of climate change. We believe that the nature and extent of climate change can be reasonably represented by constant conditions taking effect after 10,000 years out to the time of geologic stability. We are proposing to explicitly require that DOE assume water flow will increase as a result of climate change. We leave it to NRC as the licensing authority to specify the values to be used to represent climate change. However, we expect that a doubling of today's average annual precipitation beginning at 10,000 years and continuing through the period of geologic stability would provide a reasonable scenario, given NAS's statements regarding potential effects on recharge (NAS Report p. 92). NRC could also use the range of projected precipitation values for different climate states and specify a reasonable long-term average precipitation based on the duration of each climate state over the period of geologic stability. We believe that either approach will allow for a reasonable estimate of how water will impact the site without subjecting the assessments to speculative assumptions that may well be unresolvable, while providing a reasonable indicator of disposal system compliance. NRC might choose to express the ground-water flow effects directly as infiltration rates or other representative parameters, avoiding the necessity of translating precipitation and other climate-related parameters (*e.g.*, temperature or evapotranspiration rates) into infiltration.

Finally, we note that there are other potential effects of climate change such as the formation of surficial ponds or changes in fauna and flora (which could affect infiltration through changes in evapotranspiration rates). NAS did not identify these as significant, and also reiterated that speculation on the evolution of the biosphere (aside from climate) is unwarranted and unproductive. We agree fully. Therefore, in summary, we are proposing that DOE must include consideration of climate change in its performance assessment for compliance with the dose standard for the period of geologic stability. The assessment may be limited to the effects of increased water flow through the repository as a result of climate change. Climate change may be represented by constant conditions, which NRC would specify in regulation. We request comment on this proposal.

E. How Is EPA Proposing To Revise the Human-Intrusion Standard (§ 197.25) To Address Peak Dose?

As discussed in Section II.A.2, we believe it is logical and defensible to modify the human-intrusion standard in § 197.25 to parallel the revisions we are proposing for the individual-protection standard. We described in some detail in that section the reasons why we believe that course of action to be appropriate, and briefly summarize our proposal here. Like the individual-protection standard, our provisions for human intrusion in the 2001 rule envisioned some consideration of performance beyond 10,000 years. The exposures resulting from the event were subject to the same compliance standard as the individual-protection standard (15 mrem/yr at 10,000 years or earlier coupled with compilation in the EIS if doses were projected to occur after 10,000 years). In deciding to propose revisions to the human-intrusion standard to conform to changes we are proposing to make to the individual-protection provisions, we kept in mind the NAS recommendation that ''the figure-of-merit for [the human-intrusion] calculation should be the same as in the undisturbed case * * * EPA should require that the conditional risk as a result of the assumed intrusion scenario should be no greater than the risk levels that would be acceptable for the undisturbed-repository case'' (NAS Report pp. 112–113).

The 2001 standard required that DOE determine when an intrusion by drilling would be possible and assess the consequences. We believe it is still appropriate for DOE to determine the time at which the intrusion could occur. However, under our proposal today, consequences at any time within the period of geologic stability would be subject to a compliance demonstration. We are proposing to apply the same dose limits to the human-intrusion scenario as we are proposing for the individual-protection scenario. Thus, exposures incurred by the RMEI within 10,000 years after disposal as a result of the intrusion must comply with a standard of 150 μSv/yr (15 mrem/yr). Exposures after that time within the period of geologic stability must comply with a standard of 3.5 mSv/yr (350 mrem/yr). DOE must still use the same assumptions regarding the RMEI as it used for the individual-protection analysis.

We are not proposing to modify in any way the circumstances of the intrusion described in § 197.26. We believe those circumstances continue to reflect two key points emphasized by NAS. First, ''there is no scientific basis for estimating the probability of intrusion at far-future times'' (NAS Report p. 106). Second, like future society, future exploration technology cannot be predicted (NAS Report p. 107). Therefore, there is no basis for assuming a different set of circumstances to apply to intrusions beyond 10,000 years.

We request comment on our proposed changes to the human-intrusion standard. We are not soliciting, and will not consider, comments on the overall intrusion scenario or other aspects of the human-intrusion standard that are not proposed to be changed.

F. Summary of Today's Proposal by Section

Today's proposal is limited in scope. We are proposing to amend provisions only as necessary to address the Court ruling. Because of the unique nature of the challenge facing us, in which we must craft a regulatory standard to apply to times up to 1 million years, we have chosen to discuss many aspects of our 2001 rule in this document. We have done so because we believe it important that the public clearly understand what actions we are proposing to take and why, as well as reasons for not amending other provisions. In the listing that follows, we identify only those provisions of the rule that we are proposing to change today. We request public comment only on these proposed amendments. We are not proposing to change any other provisions. Therefore, we are not requesting, and will not respond to, public comments related to those provisions, since they have been previously established in rulemaking and are outside the scope of today's proposal.

Subpart A—Public Health and Environmental Standards for Storage

§ 197.2, What definitions apply in subpart A?—Amends the definition of Effective Dose Equivalent to specify that calculations be performed using organ weighting factors in Appendix A.

Subpart B—Public Health and Environmental Standards for Disposal

§ 197.12, What definitions apply in subpart B?—Modifies the definition of Performance Assessment to remove reference to 10,000 years. Modifies the definition of Period of Geologic Stability as ending 1 million years after disposal.

§ 197.13, How is subpart B implemented?—Specifies that the arithmetic mean of the distribution of projected doses is used to determine

compliance within 10,000 years. Specifies that the median of the distribution of projected doses is used to determine compliance beyond 10,000 years but within the period of geologic stability (for §§ 197.20 and 197.25 only).

§ 197.15, How must DOE take into account the changes that will occur during the next 10,000 years after disposal?—Replaces references to 10,000 years with ''period of geologic stability.''

§ 197.20, What [individual-protection] standard must DOE meet?—Retains the standard of 15 mrem/yr to apply up to 10,000 years after disposal. Adds a standard of 350 mrem/yr to apply beyond 10,000 years within the period of geologic stability.

§ 197.25, What [human-intrusion] standard must DOE meet?—Retains the standard of 15 mrem/yr to apply up to 10,000 years after disposal. Adds a standard of 350 mrem/yr to apply beyond 10,000 years within the period of geologic stability. Removes references to time of intrusion and to placement of results in EIS.

§ 197.35, What other projections must DOE make?—Section to be deleted.

§ 197.36, Are there limits on what DOE must consider in the performance assessments?—Addresses probability of features, events, and processes in assessments used to comply with proposed § 197.20(b). Adds provisions to address climate change, igneous, seismic, and general corrosion scenarios.

Appendix A, Calculation of Committed Effective Dose Equivalent—describes the method to calculate the dose for comparison with the appropriate standards.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 Federal Register 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of the specific legal mandate of Section 801 of the Energy Policy Act of 1992. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We have determined that this rule contains no information collection requirements within the scope of the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; 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.

However, the requirement to prepare a regulatory flexibility analysis does not apply if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact upon a substantial number of small entities (5 U.S.C. 605(b)). The rule proposed today would establish requirements that apply only to DOE. Therefore, it does not apply to small entities. Accordingly, I hereby certify that the rule, when promulgated, will not have a significant economic impact upon a substantial number of small entities. We continue to be interested in the potential impacts of our proposed rules on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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 why that alternative was not adopted. Before EPA establishes

any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. The proposed rule implements requirements specifically set forth by the Congress in section 801 of the EnPA and proposes radiological protection standards applicable solely and exclusively to the Department of Energy's potential storage and disposal facility at Yucca Mountain. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule proposed today would regulate only DOE on land owned by the Federal government. The rule proposed today 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. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & 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 proposed rule is not subject to Executive Order 13045 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 risks or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to radiation.

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. The rule proposed today would apply only to DOE. Construction, operation, and closure of the repository at Yucca Mountain would fulfill the Federal government's commitment to manage the final disposition of spent nuclear fuel from commercial power reactors. However, there is no direct link between operation of the repository and an increased use of nuclear power. Other economic, technical, and policy factors will influence the extent to which nuclear energy is utilized.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

In our original proposal (64 FR 46976, August 27, 1999), we requested public comment on potentially applicable voluntary consensus standards that would be appropriate for inclusion in the Yucca Mountain rule. We received no comments on this aspect of the rule. The closest analogy to consensus standards for radioactive waste disposal facilities are our regulations at 40 CFR part 191. As discussed above in this preamble, Congress expressly prohibited the application of the 40 CFR part 191 standards to the Yucca Mountain disposal facility, and, therefore, the standards promulgated in 2001 and today's proposed revisions are site-specific and developed solely for application to the Yucca Mountain disposal facility.

List of Subjects in 40 CFR Part 197

Environmental protection, Nuclear energy, Radiation protection, Radionuclides, Uranium, Waste treatment and disposal, Spent nuclear fuel, High-level radioactive waste.

Dated: August 9, 2005.

Stephen L. Johnson,

Administrator.

The Environmental Protection Agency is hereby proposing to amend part 197 of title 40, Code of Federal Regulations, as follows:

PART 197—PUBLIC HEALTH AND ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR YUCCA MOUNTAIN, NEVADA

1. The authority citation for part 197 continues to read as follows:

Authority: Sec. 801, Pub. L. 102–486, 106 Stat. 2921, 42 U.S.C. 10141n.

Subpart A—Public Health and Environmental Standards for Storage

2. Section 197.2 is amended by revising the definition of ''Effective dose equivalent'' to read as follows:

§ 197.2 What definitions apply in subpart A?

* * * * *

Effective dose equivalent means the sum of the products of the dose equivalent received by specified tissues following an exposure of, or an intake of radionuclides into, specified tissues of the body, multiplied by appropriate weighting factors. Annual committed effective dose equivalents shall be calculated using weighting factors in accordance with appendix A of this part.

* * * * *

Subpart B—Public Health and Environmental Standards for Disposal

3. Section 197.12 is amended by revising paragraph (1) of the definition of ''Performance assessment'' and the definition of ''Period of geologic stability'' to read as follows:

§ 197.12 What definitions apply in subpart B?

* * * * *

Performance assessment means an analysis that:

(1) Identifies the features, events, processes, (except human intrusion), and sequences of events and processes (except human intrusion) that might affect the Yucca Mountain disposal system and their probabilities of occurring;

* * * * *

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities. This period is defined to end at 1 million years after disposal.

* * * * *

4. Section 197.13 is revised to read as follows:

§ 197.13 How is subpart B implemented?

(a) The NRC will determine compliance based upon the arithmetic mean of the projected doses from DOE's performance assessments for the period within 10,000 years after disposal:

(1) For § 197.20 of this subpart; and

(2) For §§ 197.25 and 197.30 of this subpart, if performance assessment is used to demonstrate compliance with either or both of these sections.

(b) NRC will determine compliance based upon the median of the projected doses from DOE's performance assessments for the period after 10,000 years of disposal and through the period of geologic stability:

(1) For § 197.20 of this subpart; and

(2) For § 197.25, if a performance assessment is used to demonstrate compliance.

5. Section 197.15 is revised to read as follows:

§ 197.15 How must DOE take into account the changes that will occur during the period of geologic stability?

The DOE should not project changes in society, the biosphere (other than climate), human biology, or increases or decreases of human knowledge or technology. In all analyses done to demonstrate compliance with this part, DOE must assume that all of those factors remain constant as they are at the time of license application submission to NRC. However, DOE must vary factors related to the geology, hydrology, and climate based upon cautious, but reasonable assumptions of the changes in these factors that could affect the Yucca Mountain disposal system during the period of geologic stability, consistent with the requirements for performance assessments specified at § 197.36.

6. Section 197.20 is revised to read as follows:

§ 197.20 What standard must DOE meet?

(a) The DOE must demonstrate, using performance assessment, that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than the following annual committed effective dose equivalent from releases from the undisturbed Yucca Mountain disposal system:

(1) 150 microsieverts (15 millirems) for 10,000 years following disposal; and

(2) 3.5 millisieverts (350 millirems) after 10,000 years, but within the period of geologic stability.

(b) The DOE's performance assessment must include all potential pathways of radionuclide transport and exposure.

7. Section 197.25 is revised to read as follows:

§ 197.25 What standard must DOE meet?

(a) The DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 197.26) could occur without recognition by the drillers.

(b) The DOE must demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual will receive an annual committed effective dose equivalent, as a result of the human intrusion, of no more than:

(1) 150 microsieverts (15 millirems) for 10,000 years following disposal; and

(2) 3.5 millisieverts (350 millirems) after 10,000 years, but within the period of geologic stability.

(c) The analysis must include all potential environmental pathways of radionuclide transport and exposure.

§ 197.35 [Removed and Reserved]

8. Section 197.35 is removed and reserved.

9. Section 197.36 is revised to read as follows:

§ 197.36 Are there limits on what DOE must consider in the performance assessments?

(a) Yes, there are limits on what DOE must consider in the performance assessments. The DOE's performance assessments conducted to show compliance with §§ 197.20(a)(1), 197.25(b)(1), and 197.30 shall not include consideration of very unlikely features, events, or processes, *i.e.*, those that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal (less than one chance in 100,000,000 per year). In addition, unless otherwise specified in these standards or NRC regulations, DOE's performance assessments need not evaluate the impacts resulting from any features, events, and processes or sequences of events and processes with a higher chance of occurrence if the results of the performance assessments would not be changed significantly in the initial 10,000 year period after disposal.

(b) For performance assessments conducted to show compliance with §§ 197.25(b) and 197.30, DOE's performance assessments shall exclude unlikely features, events, or processes, or sequences of events and processes. The DOE should use the specific probability of the unlikely features, events, and processes as specified by NRC.

(c) For performance assessments conducted to show compliance with §§ 197.20(a)(2) and 197.25(b)(2), DOE's performance assessments shall project the continued effects of the features, events, and processes included in paragraph (a) of this section beyond the 10,000-year post-disposal period through the period of geologic stability. The DOE must evaluate all of the features, events, or processes included in paragraph (a) of this section, and also:

(1) The DOE must assess the effects of seismic and igneous scenarios, subject to the probability limits in paragraph (a) of this section for very unlikely features, events, and processes. Performance assessments conducted to show compliance with § 197.25(b)(2) are also subject to the probability limits for unlikely features, events, and processes as specified by NRC.

(i) The seismic analysis may be limited to the effects caused by damage to the drifts in the repository and failure of the waste packages.

(ii) The igneous analysis may be limited to the effects of a volcanic event directly intersecting the repository. The igneous event may be limited to that causing damage to the waste packages directly, causing releases of radionuclides to the biosphere, atmosphere, or ground water.

(2) The DOE must assess the effects of climate change. The climate change analysis may be limited to the effects of increased water flow through the repository as a result of climate change, and the resulting transport and release of radionuclides to the accessible environment. The nature and degree of climate change may be represented by constant climate conditions. The analysis may commence at 10,000 years after disposal and shall extend to the period of geologic stability. The NRC shall specify in regulation the values to be used to represent climate change, such as temperature, precipitation, or infiltration rate of water.

(3) The DOE must assess the effects of general corrosion on engineered barriers. The DOE may use a constant representative corrosion rate throughout the period of geologic stability or a distribution of corrosion rates correlated to other repository parameters.

10. Appendix A to part 197 is added to read as follows:

Appendix A to Part 197—Calculation of Annual Committed Effective Dose Equivalent

Unless otherwise directed by NRC, DOE shall use the radiation weighting factors and tissue weighting factors in this Appendix to calculate committed effective dose equivalent for compliance with sections 20 and 25 of this part. NRC may allow DOE to use updated factors issued after the effective date of this regulation. Any such factors shall have been issued by consensus scientific organizations and incorporated by EPA into Federal radiation guidance in order to be considered generally accepted and eligible for this use. Further, they must be compatible with the effective dose equivalent dose calculation methodology established in ICRP 26/30 and continued in ICRP 60/72, and incorporated in this Appendix.

I. Equivalent Dose

The calculation of the committed effective dose equivalent (CEDE) begins with the determination of the equivalent dose, H_T, to a tissue or organ, T, listed in Table A.2 below by using the equation:

$$H_T = \sum_R D_{T,R} \cdot w_R$$

where $D_{T,R}$ is the absorbed dose in rads (one gray, an SI unit, equals 100 rads) averaged over the tissue or organ, T, due to radiation type, R, and w_R is the radiation weighting factor which is given in Table A.1 below. The unit of equivalent dose is the rem (sievert, in SI units).

TABLE A.1.—RADIATION WEIGHTING FACTORS, W_R [1]

Radiation type and energy range [2]	w_R value
Photons, all energies	1
Electrons and muons, all energies	1
Neutrons, energy:	
< 10 keV	5
10 keV to 100 keV	10
> 100 keV to 2 MeV	20
> 2 MeV to 20 MeV	10
> 20 MeV	5
Protons, other than recoil protons, > 2 MeV	5
Alpha particles, fission fragments, heavy nuclei	20

[1] All values relate to the radiation incident on the body or, for internal sources, emitted from the source.

[2] See paragraph A14 in ICRP Publication 60 for the choice of values for other radiation types and energies not in the table.

II. Effective Dose Equivalent

The next step is the calculation of the *effective dose equivalent,* E. The probability of occurrence of a stochastic effect in a tissue or organ is assumed to be proportional to the equivalent dose in the tissue or organ. The constant of proportionality differs for the various tissues of the body, but in assessing health detriment the total risk is required. This is taken into account using the tissue weighting factors, w_T in Table A.2, which represent the proportion of the stochastic risk resulting from irradiation of the tissue or organ to the total risk when the whole body is irradiated uniformly and H_T is the equivalent dose in the tissue or organ, T, in the equation:

$E = \Sigma\, w_T \cdot H_T$.

TABLE A.2.—TISSUE WEIGHTING FACTORS, W_T

Tissue or organ	w_T value
Gonads	0.20
Bone marrow (red)	0.12
Colon	0.12
Lung	0.12
Stomach	0.12
Bladder	0.05
Breast	0.05
Liver	0.05
Esophagus	0.05
Thyroid	0.05
Skin	0.01
Bone surface	0.01
Remainder	[a,b] 0.05

[a] Remainder is composed of the following tissues: adrenals, brain, extrathoracic airways, small intestine, kidneys, muscle, pancreas, spleen, thymus, and uterus.

[b] The value 0.05 is applied to the mass-weighted average dose to the Remainder tissues group, except when the following "splitting rule" applies: If a tissue of Remainder receives a dose in excess of that received by any of the 12 tissues for which weighting factors are specified, a weighting factor of 0.025 (half of Remainder) is applied to that tissue or organ and 0.025 to the mass-averaged committed equivalent dose equivalent in the rest of the Remainder tissues.

III. Annual Committed Tissue or Organ Equivalent Dose

For internal irradiation from incorporated radionuclides, the total absorbed dose will be spread out in time, being gradually delivered as the radionuclide decays. The time distribution of the absorbed dose rate will vary with the radionuclide, its form, the mode of intake and the tissue within which it is incorporated. To take account of this distribution the quantity *committed equivalent dose,* $H_T(\tau)$ where τ is the integration time in years following an intake over any particular year, is used and is the integral over time of the equivalent dose rate in a particular tissue or organ that will be received by an individual following an intake of radioactive material into the body:

$$H_T(\tau) = \int_{t_0}^{t_0+\tau} H_T(t)\, dt$$

for a single intake of activity at time t_0 where $H_T(t)$ is the relevant equivalent-dose rate in a tissue or organ at time t. For the purposes of this rule, the previously mentioned single intake may be considered to be an annual intake.

IV. Annual Committed Effective Dose Equivalent

If the committed equivalent doses to the individual tissues or organs resulting from an annual intake are multiplied by the appropriate weighting factors, w_T, from table A.2, and then summed, the result will be the *annual committed effective dose equivalent,* $E(\tau)$:

$$E(\tau) = \sum_T w_T \cdot H_T(\tau).$$

[FR Doc. 05–16193 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
August 22, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2005–06 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 1, 2005.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 22 and 23, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2005–06 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2005–06 regular waterfowl seasons. On August 1, 2005, we published in the **Federal Register** (70 FR 44200) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2005–06 season.

On July 27–28, 2005, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2005–06 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through July 29, 2005, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or around September 20, 2005.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions at the time of the survey in May 2005 were variable, with some areas improved relative to last year and others remaining or becoming increasingly dry. The total May pond estimate (Prairie and Parkland Canada and the northcentral U.S. combined) was 5.4 ± 0.2 million ponds. This was 37 percent greater than last year's estimate of 3.9 ± 0.2 million ponds and 12 percent higher than the long-term average of 4.8 ± 0.1 million ponds.

Habitat in the surveyed portion of the U.S. prairies was in fair to poor condition due to a dry fall, winter, and early spring and warm winter temperatures. Nesting habitat was particularly poor in South Dakota because of below average precipitation resulting in degraded wetland conditions and increased tilling and grazing of wetland margins. Birds may have overflown the State for wetter conditions to the north. Water levels and upland nesting cover were relatively better in North Dakota and eastern Montana, and wetland conditions in these regions improved markedly during June following the survey, with the onset of well-above average precipitation. The 2005 pond estimate for north-central U.S. (1.5 ± 0.1 million) was similar to last year's estimate.

The prairies of southern Alberta and southwestern Saskatchewan were also quite dry in early May. The U.S. and Canadian prairies received substantial rain in late May and during the entire month of June that recharged wetlands

and encouraged growth of vegetation. While this improved habitat quality on the prairies, it probably came too late to benefit early-nesting species or prevent overflight. This heavy rain likely benefited late-nesting species and improved renesting. Record high rains flooded the lower elevation prairie areas of central Manitoba during April, producing fair or poor nesting conditions for breeding waterfowl. In contrast, the Canadian Parklands were much improved compared to last year, due to several years of improving nesting cover and above-normal precipitation last fall and winter. These areas were in good-to-excellent condition at the start of the survey and remained so into July. Overall, the May pond estimate in Prairie and Parkland Canada was 3.9 ± 0.2 million. This was a 56 percent increase over last year's estimate of 2.5 ± 0.1 million ponds and 17 percent higher than the long-term average of 3.3 ± 0.3 million ponds. Portions of northern Manitoba and northern Saskatchewan also experienced flooding, resulting in only fair conditions for breeding waterfowl. In contrast, most of the Northwest Territories was in good condition due to adequate water and a timely spring break-up that made habitat available to early-nesting species. However, dry conditions in eastern parts of the Northwest Territories and northern Alberta resulted in low water levels in lakes and ponds and the complete drying of some wetlands. Therefore, habitat was also classified as fair in these areas.

For the most part, habitats in Alaska were in excellent condition, with an early spring and good water levels, except for a few flooded river areas and on the North Slope, where spring was late.

In the Eastern Survey Area (strata 51–72), habitat conditions were generally good due to adequate water and relatively mild spring temperatures. Exceptions were the coast of Maine and the Atlantic Provinces, where May temperatures were cool and some flooding occurred along the coast and major rivers. Also, below-normal precipitation left some habitat in fair to poor condition in southern Ontario. However, precipitation in southern Ontario after survey completion improved habitat conditions in that region.

Breeding population status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 31.7 ± 0.6 [SE] million birds, similar to last year's estimate of 32.2 ± 0.6 million birds but 5 percent below the 1955–2004 long-term average. Mallard (*Anas platyrhynchos*) abundance was 6.8 ± 0.3 million birds, which was 9 percent below last year's estimate of 7.4 ± 0.3 million birds and 10 percent below the long-term average. Blue-winged teal (*A. discors*) abundance was 4.6 ± 0.2 million birds, similar to last year's estimate of 4.1 ± 0.2 million birds, and the long-term average. Of the other duck species, the gadwall estimate (*A. strepera;* 2.2 ± 0.1 million) was 16 percent below that of 2004, while estimates of northern pintails (*A. acuta;* 2.6 ± 0.1 million; +17 percent) and northern shovelers (*A. clypeata;* 3.6 ± 0.2 million; +28 percent) were significantly above 2004 estimates. The estimate for northern shovelers was 67 percent above the long-term average for this species, as were estimates of gadwall (+30 percent) and green-winged teal (*A. crecca;* 2.2 ± 0.1 million; +16 percent). Northern pintails remained 38 percent below their long-term average despite this year's increase in abundance. Estimates of American wigeon (*A. americana;* 2.2 ± 0.1 million; −15 percent) and scaup (*Aythya affinis* and *A. marila* combined; 3.4 ± 0.2; −35 percent) also were below their respective long-term averages; the estimate for scaup was a record low. Abundances of redheads (A. americana) and canvasbacks (*A. valisineria*) were similar to last year's counts and long-term averages.

The eastern survey area was restratified, and is now composed of strata 51–72. Mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus;*]; −25 percent), mallards (−36 percent), American black ducks (*A. rubripes,* −24 percent), and green-winged teal (−46 percent) were all below their 2004 estimates. Ring-necked ducks (*Aythya collaris*) and goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) were similar to their 2004 estimates. No species in the eastern survey area differed from their long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 7.5 + 0.3 million which is 10 percent lower than the 2004 estimate of 8.3 + 0.3 million. The 2005 mid-continent mallard fall-flight index is 9.3 + 0.1 million, similar to the 2004 estimate of 9.4 + 0.1 million birds. These indices were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

See section 1.A. Harvest Strategy Considerations for further discussion on the implications of this information for this year(s selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). The timing of spring snowmelt in important goose and swan nesting areas in most of the Arctic and subarctic was near average, or earlier than average in 2005. Delayed nesting phenology or reduced nesting effort was indicated for only Alaska's North Slope and areas of the eastern Canadian High Arctic. Primary abundance indices in 2005 increased from 2004 levels for 12 goose populations and decreased for 13 goose populations. Primary indices in 2005 increased for western tundra swans and decreased for eastern tundra swans. Of these 27 populations, the Atlantic, Eastern Prairie, Mississippi Flyway Giant, and Aleutian Canada goose populations, and the Western Arctic/Wrangel Island snow goose population displayed significant positive trends during the most recent 10-year period. Only Short Grass Prairie Population Canada geese and Pacific brant displayed significant negative 10-year trends. The forecast for the production of geese and swans in North America in 2005 is generally favorable and improved from that of 2004.

Waterfowl Harvest and Hunter Activity

During the 2004–05 hunting season, both duck and goose harvest decreased from the previous year. U.S. hunters harvested 12,312,200 ducks in 2004–05 compared to 13,165,500 in 2003–04, and they harvested 3,189,700 geese, compared to 3,828,200 geese taken in 2003–04. The five most commonly harvested duck species were mallard (4,531,600), green-winged teal (1,373,600), gadwall (1,364,000), wood duck (1,105,500), and wigeon (750,600).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 6, 2005, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 24,

2005, **Federal Register**, discussed the regulatory alternatives for the 2005(06 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 6 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in successive numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the April 6, 2005, **Federal Register** document.

General

Council Recommendations: The Atlantic Flyway Council recommended increasing the possession limit of waterfowl to four times the daily bag limit, except where currently more liberal.

Service Response: We do not support the recommendation to increase possession limits. The possession limit regulation [50 CFR 20.33] is sometimes the only tool law enforcement personnel have to combat over-bag violations, due to the remoteness of some hunting locations and the difficulties officers/agents encounter while conducting surveillance of hunter compliance. Further, we believe the deterrence to violate would be substantially reduced by increasing the traditional possession limits.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative, with the exception of some specific bag limits described below in section 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections ii. September Teal/Wood Duck Seasons, iii. Black Ducks, iv. Canvasbacks, v. Pintails, and vii. Scaup.

Service Response: We are continuing development of an AHM protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. For the 2005 hunting season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards. We also recommend that the regulatory choice for the Atlantic Flyway continues to depend on the status of eastern mallards. Investigations of the dynamics of western mallards (and their potential effect on regulations in the West) are continuing; therefore we are not yet prepared to recommend an AHM protocol for this mallard stock.

For the 2005 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, we agreed in 2003 to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus MN, MI, and WI) is ≥5.5 million.

Optimal AHM strategies for the 2005 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2005 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 7.54 million midcontinent mallards (traditional surveys area plus MN, WI, and MI), 3.9 million ponds in Prairie Canada, and 1.05 million eastern mallards, the prescribed regulatory choice for all four Flyways is the liberal alternative.

Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyways regarding selection of the ''liberal'' regulatory alternative and propose to adopt the ''liberal'' regulatory alternative, as described in the June 24 **Federal Register**.

C. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow three zones, with two-way splits in each zone, as an additional option for duck season configurations in 2006–2010. Guidelines for zone-split configurations should be finalized by September 2005 so states have adequate opportunity to consider possible changes for 2006.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service allow three zones, with two-way splits in each zone, and four zones with no splits, as additional options for duck season configurations in 2006–2010. In addition, the Committee recommended that States with existing grand fathered status be allowed to retain that status.

The Central Flyway Council recommended allowing three zones, with two-way splits (three season segments) in each zone, and four zones with no splits, as additional options for duck season configurations in 2006–2010.

Service Response: In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991, 1996, and 2001. The fourth open season will occur next year when zone/split configurations will be established for the 2006–2010 period.

In response to recommendations from the Flyway Councils, we considered changes to the current zone/split guidelines. We believe that the guidelines implemented in 2001 continue to achieve their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors and that the guidelines need not be changed. Thus, these guidelines will be used to guide zone/split selection for next year's and future open seasons.

We request that by April 15, 2006, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2006–2010). Those States wishing to change their configuration should submit a proposal for the change by this date.

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the *regular* duck season:

1. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

2. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions governing the use of zones and split seasons for ducks.

3. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

4. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone/split-season configuration must conform to one of the following options: (1) Three zones with no splits; (2) Split seasons (no more than 3 segments) with no zones; or (3) Two zones with the option for 2-way split seasons in one or both zones.

Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changed its zoning arrangement, it could not go back to the grandfathered arrangement it previously had in place. Current grandfathered arrangements are:

Atlantic Flyway: Massachusetts, New Jersey—3 zones with 2-segment splits in each zone. New York—5 zones with 2-segment splits in each zone. Pennsylvania—4 zones with 2-segment splits in each zone.

Mississippi Flyway: Michigan, Indiana, Ohio—3 zones with 2-segment splits in each zone.

Central Flyway: Nebraska—5 zones with 2-segment splits in each zone. South Dakota—4 zones with 2-segment splits in each zone.

Pacific Flyway: Alaska—5 zones with 2-segment splits in 1 zone. California—5 zones with 2-segment splits in each zone.

D. Special Seasons/Species Management

ii. September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended increasing the wood duck bag limit in the Atlantic Flyway to three birds during October 1 to the first Sunday in November for a three-year experimental period (2005/06–2007/08).

Service Response: We do not support the Atlantic Flyway Council's proposal to increase the bag limit for wood ducks. We note that the breeding bird survey population trend for the past 10 years exhibits no significant trend, suggesting the population is stable at current harvest levels. Further, preliminary harvest rate estimates from the cooperative reward band study suggest that current wood duck harvest rates are higher than previously thought. We believe that a full assessment of this information is needed to determine whether or not wood ducks can sustain additional harvest pressure. We propose to continue our cooperative assessments of available wood duck population data with both the Mississippi and Atlantic Flyways, and expect a full assessment of this information to take several years.

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended the Service give conceptual approval to allow the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey an option to return to a two black duck daily bag limit in any or all waterfowl management zones for possible implementation in 2006. The season length for black ducks would be reduced for the number of days appropriate to ensure no increase in black duck harvest or harvest rate. This approach would require the development of a 3-year experimental design covering a block of states large enough to support appropriate evaluation.

Service Response: During this past year, we have continued dialogue with the Atlantic and Mississippi Flyways regarding assessments of the harvest potential of black ducks. We are particularly concerned with evidence of a long-term decline in the productivity of black ducks, which implies declining harvest potential. Harvest rates of black ducks have increased concurrently with implementation of AHM and the return to longer seasons. Current harvest rates as measured by reward banding are now at or near the levels which are likely to produce maximum sustainable harvests. If the decline in productivity continues and harvest rates are not reduced, harvest and population size can be expected to decline as well. In light of the assessment work conducted to date, we do not support any regulatory changes this year. Thus, we do not support the Atlantic Flyway Council's proposal.

In addition to the biological concerns expressed above, we have a more basic conceptual concern with this proposal. In general, we do not support dividing Flyways into regions with differential species regulations and/or regulatory options. Our approach is predicated on the fact that our monitoring and assessment capacity are primarily designed to monitor harvests and population status at the Flyway scale. In many cases, our monitoring programs do not have the necessary precision to evaluate approaches such as has been recommended here. Although additional effort can be directed at refining these estimates, we believe the costs of the additional information far outweighs any potential benefits to resource conservation, harvest opportunity or hunter satisfaction.

iv. Canvasbacks

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a ''restrictive'' canvasback season consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic and Mississippi Flyways, 39-day season in the Central Flyway, and 60-day season in the Pacific Flyway.

Service Response: Based on regulatory actions in recent years and

recommendations from the Flyway Councils, the canvasback harvest strategy was modified in 2004 to allow partial seasons within the regular duck season. The modification allows a canvasback season length equal to that of the ''restrictive'' AHM regulatory alternative if a full season is not supported, but the reduced harvest from the restricted season predicts a spring abundance the following year equal to or greater than the objective of 500,000 birds. Otherwise, the season on canvasbacks would be closed. Further, based on a recommendation from the Pacific Flyway Council, Alaska would have a 1-bird daily bag limit for the entire regular duck season in all years unless the Service determines that it is in the best interest of the canvasback resource to close the season in Alaska as well as the lower 48 states.

This year's spring survey resulted in an estimate of 520,574 canvasbacks. The estimate of ponds in Prairie Canada was 3.9 million, which was 17% above the average. The allowable harvest in the U.S. calculated from these numbers is 84,424 birds, which is below the predicted U.S. harvest of 118,904 associated with the 'liberal' duck season alternative. Thus, for 2005–06, a canvasback season the entire length of the regular season is not supported. However, the ''restrictive'' season length within the regular duck season is expected to result in a harvest of about 61,758 canvasbacks, and is supported. Thus, we propose a season length at the level of the ''restrictive'' AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: We earlier endorsed the continued use of the pintail harvest strategy without alteration from the provision adopted in 2004. With an observed spring breeding population of 2,561,000 and a projected fall flight of 3,215,000 pintails, the harvest strategy prescribes a full season and a 1-bird bag in all Flyways. Under the ''liberal'' season length, this regulation is expected to result in a harvest of 603,000 pintails with 2,288,000 birds in next year's breeding population. Thus, we concur with the Atlantic, Mississippi, and Pacific Flyway Councils on the selection of a full season for pintails.

Furthermore, we agree with the Central Flyway's recommendation to adopt a 39-day ''season within a season'' for pintails. We understand that this departure from the pintail strategy is a necessary step for the Flyway to complete a 3-year evaluation of the ''season within a season'' structure for pintails and canvasbacks. This baseline information will allow a comparison to a proposed strategy to implement an experimental ''Hunter's Choice'' season in the future.

vi. Scaup

Council Recommendations: The Atlantic Flyway recommended States be given the option of choosing a scaup season of sixty days with a one bird daily bag limit, or a restrictive 30-day (consecutive) season with a three bird daily bag limit.

Service Response: Almost two years of assessment work on scaup has led us to conclude that while population size has continued to decline, harvest rates have continued to increase. Although harvest has not been implicated as a causal factor in this population decline, harvests now appear to be at or near maximum sustainable levels. Moreover, there is evidence that the long-term decline of the scaup population has been accompanied by declines in the sustainable levels of harvest. Therefore, we believe regulatory restrictions on scaup are warranted and propose: (1) That each flyway reduce the current bag limit for scaup by 1 bird; (2) That we continue assessment work with a goal of developing a framework for making more informed regulatory decisions for scaup harvest management; and finally, (3) That we ascertain if this bag-limit restriction results in a meaningful reduction in harvest rate, which is more consistent with scaup population levels and harvest potential than is currently the case.

3. Mergansers

Council Recommendations: The Atlantic Flyway Council recommended that beginning with the 2005–06 hunting season, the Service offer the Atlantic Flyway States the option of including the merganser bag limit within the regular duck bag limit (the merganser limit would be the same as the regular duck bag limit). States would also have the option of selecting a separate merganser bag limit. The Council further recommended that the daily bag limit on hooded mergansers be increased from 1 to 2 birds.

Service Response: We concur with the recommendation to allow mergansers to be included in the duck bag limit in the Atlantic Flyway. Regarding hooded mergansers, we understand that a variety of data sources suggest that hooded mergansers may be increasing. However, the recommendation from the Atlantic Flyway Council to increase the bag limit from one to two has implications beyond the Atlantic Flyway. Therefore, we will defer a decision until next year to allow the other Flyway Councils to consider the ramifications of this recommendation in their respective Flyways.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Atlantic Population (AP) Canada goose hunting regulations include a 45-day season, with a daily bag limit of 3 geese in the New England and Mid-Atlantic Regions with an opening framework date of the fourth Saturday in October and a closing date of January 31. In the Chesapeake Region (except Back Bay, VA), season length would be 45 days, with a daily bag limit of 2 geese. In Back Bay, VA, season length would be 15 days at the end of the Virginia's AP season, with a daily bag limit of 1 goose. The framework opening date in the Chesapeake Region would be November 15 and the closing date would be January 31. Remaining AP harvest areas (*i.e.*, Northeast Hunt Unit in coastal NC) would remain closed. The Council also recommended modification of the Pymatuning Zone in Pennsylvania to include a portion of Crawford County. Further, the Council recommended that the framework for the SJBP Canada goose zone in Pennsylvania be 70 hunting days between the second Saturday in October and February 15 with a daily bag limit of no more than 2 for days used before January 15 and a daily bag of 5 for days used between January 15 and February 15. Lastly, the Council recommended modifications to Atlantic Flyway Resident Population (AFRP) regular-season hunting zones in New York, Pennsylvania, Maryland, and North Carolina.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a number of changes in season length, season dates, bag limits, and quotas for Minnesota, Iowa, and Missouri in response to

changes in the status of the Eastern Prairie Population (EPP) Canada goose population and in Kentucky, Tennessee, Wisconsin, Michigan, and Illinois in response to changes in the status of the Mississippi Valley Population (MVP) Canada goose population.

The Pacific Flyway Council recommended the following changes for geese in the Pacific Flyway:

1. Increase the daily bag limit for Aleutian and cackling geese in California's Northeast zone and Balance of State zone from 1 per day to 4 per day.

2. Remove the Canada goose hunting closure in the Sacramento Valley of the Balance of State Zone in California.

3. Decrease the cackling goose daily bag limit from 4 per day to 2 per day in the Oregon and Washington special permit goose zones.

4. In the Oregon special permit goose zone remove the restriction on Aleutian geese.

5. Remove the goose hunting closure in Coos and Curry counties Oregon.

Service Response: We concur with all of the Atlantic Flyway Council's recommendations. However, regarding the recommendation to establish a limited season in Back Bay, Virginia, we are proposing the addition of a 15-day season, 1-bird/per season, in North Carolina's Northeastern Hunt Unit. Both States will be required to conduct a 3-year evaluation to determine the origin of the harvested birds. We will work with Virginia and North Carolina to develop an MOU specifying criteria regarding sample sizes and methods of assessment. These assessments will be conducted at the individual State level.

We also concur with all of the recommendations forwarded by the Pacific Flyway Council with one exception, the request to increase small Canada goose bag limits from one to four in California. We are aware of the concerns regarding increasing depredation complaints stemming from increasing numbers of Aleutian Canada geese in California. We are also committed to achieving the population objectives for cackling geese and support the recommendations from the Pacific Flyway Council to achieve the targeted harvest reductions. The proposal to increase the small Canada goose bag limit in the Northeastern and Balance-of-State Zones in California does address the Aleutian depredation problem, but not the requested targeted harvest reductions for cackling geese. Therefore, since we believe only cackling geese occur in the Northeastern Zone, we do not support the proposed bag limit increase for this zone, as this change will not address the Aleutian goose depredation issue and will increase the harvest of cackling geese. However, in recognition of the depredation issue, and recognizing the very limited cackler harvest expected to result from the proposed bag limit increase in the Balance-of-State Zone, we support the increase in the bag limit from one to four small Canada geese in this zone.

5. White-Fronted Geese

Council Recommendations: The Atlantic Flyway Council recommended that the Service include white-fronted geese as part of Canada goose hunting regulation frameworks in the Atlantic Flyway to allow the legal take of this species.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 2005–06 white-fronted goose regulations be consistent with the ''base'' regulations in the current White-fronted Goose Management Plan. This would result in regulations options of 72 days and 2 white-fronted geese per day or 86 days and 1 white-fronted goose per day. Their recommendation is contingent upon the same regulations being implemented in the eastern portion of the Central Flyway.

The Central Flyway Council recommended a season framework of 72 days with a daily bag limit of 2 white-fronted geese, or an alternative season of 86 days with a bag limit of 1, in all East-tier States. States could split the season once and the possession limit would be twice the daily bag limit. In the West Tier States, the Council recommended a season framework of 107 days, except in Texas and Colorado where the season would be 95 days, with a daily bag limit of 5 white-fronted geese except in the Western Goose Zone of Texas where the daily bag limit will be 1 white-fronted goose. States could split the season once and the possession limit would be twice the daily bag limit.

Service Response: We support the recommendation of the Mississippi and Central Flyway Councils to return to the base regulations package for white-fronted geese this year as described in the original management plan.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day season with a 2-bird daily bag limit for Atlantic brant in 2005.

The Pacific Flyway Council recommends decreasing the brant season length in Washington from 16 days to 8 days and decreasing the brant season in California from 30 consecutive to 15 days. Both States may create two zones. Seasons in Oregon and California must end by December 15.

Service Response: We concur.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the light goose limit throughout the Flyway from 3 per day to 4 per day.

Service Response: We concur.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under **ADDRESSES**.

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment

period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582), and our Record of Decision on August 18, 1988 (53 FR 31341). In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process this year.

Endangered Species Act Consideration

Prior to issuance of the 2005–06 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. Lastly, OMB has approved the information collection requirements of the Alaska Migratory Bird Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska. The OMB control number for the information collection is 1018–0124 (expires 10/31/2006). A Federal 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.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of

property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 11, 2005.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2005–06 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2005, and March 10, 2006.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways:

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units:

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms (dark'' and (light'' geese include the following species: *Dark geese:* Canada geese, white-fronted geese, brant, and all other goose species except light geese. *Light geese:* snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: 60 days, except canvasbacks which may not exceed 30 days, and season splits must conform to each State(s zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 2 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those

selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut: North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 29) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Northeast Hunt Unit: A 15-day experimental season may be held concurrent with the season selected for the Back Bay Area of Virginia. The seasonal bag limit is 1 bird.

Pennsylvania: SJBP Zone: A 70-day season may be held between the second Saturday in October (October 8) and February 15, with a 2-bird daily bag limit until January 14 and a 5-bird daily bag limit between January 15 and February 15.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: A 15-day experimental season may be held during the last 15 days of the AP Zone season with a 1-bird daily bag limit.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between the Saturday nearest September 24 (September 24) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: 60 days, except that the season for canvasbacks may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 2 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded erganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 24) and March 10; for white-fronted geese not to exceed 72 days, with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 24) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 24) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 80,600 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 86 days or when 16,000 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone—The season for Canada geese will close after 86 days or when 20,600 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 86 days or when 8,200 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days and may be split into 3 segments in each zone. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 10,300 birds. Of the 10,300-bird quota, 6,700 birds will be allocated to the Ballard Reporting Area and 2,600 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with a 72-day white-fronted goose season or 1 white-fronted goose with an 86-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP—Upper and Lower Peninsula Zones—The total harvest of Canada geese will be limited to 50,000 birds for these zones combined. The framework opening date for all geese is September 16 and the season for Canada geese may extend for 28 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 25 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 28 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan GMU—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

(d) Central Michigan GMU—A 30-day special Canada goose season may be

held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota: (a) West Zone

(1) West Central Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

(b) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 40 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 40 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 60 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 40 days and the daily bag limit is 2 Canada geese. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 62,500 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 21,000 birds. The season may not exceed 92 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 800 birds. The season may not exceed 65 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 40,700 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 92 days, except in the Mississippi River Subzone, where the season may not exceed 72 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 40,200 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures:

When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except canvasbacks and pintails, which may not exceed 39 days, and season splits must conform to each State(s zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 10). A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except canvasbacks and pintails, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that

include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 24) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999 are required.

Season Lengths and Limits: Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or a 86-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 3 scaup, and 2 redheads. A single canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the last Sunday in January (January 29). Basic daily bag limits are 4 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 24), and the last Sunday in January (January 29). Basic daily bag limits are 4 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington an 8-day season, and California a 15-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona: The daily bag limit for dark geese is 3.

California: Northeastern Zone: The daily bag limit is 4 geese and may include no more than than 1 cackling Canada goose or 1 Aleutian Canada goose and 2 white-fronted geese.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 5).

Balance-of-the-State Zone: Limits may not include more than 4 geese per day, of which not more than 3 may be white-fronted geese. In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

Harney, Klamath, Lake, and Malheur County Zone: For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will

be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese.

Closed Zone: All of Tillamook County.

Southwest Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Washington: The daily bag limit is 4 geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the daily bag limit may include 1 Aleutian goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho: The daily bag limit is 4 geese.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Quota Zones

Seasons on dark geese must end upon attainment of individual quotas of dusky geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 26). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 1). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 11) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 8) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2004, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.

—The season may be 90 days, from October 1 to January 31.

—In North Carolina, no more than 5,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 1) to January 31.

—In the Central Flyway portion of Montana, no more than 500 permits may be issued.

—In North Dakota, no more than 2,200 permits may be issued.

—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St. (Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to

Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction

with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP L–Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: Starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H–Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, Howard, and Montgomery Counties; that portion of Baltimore County south of Route 138, Route 137, and Mount Carmel Road; that portion of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that portion of Prince George's County west of Route 3 and Route 301, that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County south of Route 88, west of Route 30 from the intersection of Route 30 and Route 88 to the intersection of Route 30 and Route 482, south of Route 482, south of Route 27 from the intersection of Route 27 and Route 482 to the intersection of Route 27 and Route 97, and west of Route 97 from the Intersection of Route 27 and Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Area: That area east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York(Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: Consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York-Ontario boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: Consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along 41 Route to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: that area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York-Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: that area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: that area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to International waters. Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee,

Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer counties and the area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey state line).

SJBP Zone: Erie, Mercer and Crawford Counties except for the Pymatuning Zone.

Pymatuning Zone: The area south of SR 198 from the Ohio state line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line.

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey state line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia–Virginia Border (Loudoun County–Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of Grundy, LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP—Upper Peninsula Zone: The MVP—Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP—Lower Peninsula Zone: The MVP—Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75 / U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson;

thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri

Same zones as for ducks but in addition:

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan

County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Bon Homme, Brule, Buffalo, Charles Mix, Gregory, Hughes, Lyman, Stanley, and Sully Counties; that portion of Dewey County south of U.S. 212, that portion of Hyde County south of U.S. Highway 14; that portion of Potter County west of U.S. Highway 83; Fall River County east of SD 71 and U.S. 385; and that portion of Custer County, east of SD 79 and south of French Creek.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas-Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Area 4: Big Horn and Fremont Counties.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to

I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: All of Tillamook County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the state.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. 05–16393 Filed 8–19–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
August 22, 2005

Part IV

Environmental Protection Agency

40 CFR Part 141

Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems Revisions; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[Docket No. OW–2004–0001; FRL–7954–8]

RIN 2040–AD93

Unregulated Contaminant Monitoring Regulation (UCMR) for Public Water Systems Revisions

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the United States Environmental Protection Agency (EPA) to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored every five years. EPA published such a list for the first Unregulated Contaminant Monitoring Regulation cycle (*i.e.*, UCMR 1) and a revised approach for UCMR implementation in the **Federal Register** dated September 17, 1999. UCMR 1 established a three-tiered approach for monitoring contaminants based on the availability of analytical methods and laboratory capacity considerations. Today's proposed regulation meets the SDWA requirement to publish a listing of unregulated contaminants every five years.

Today's action proposes the design for the second UCMR cycle. EPA is proposing to require monitoring of 26 chemicals using nine different analytical methods. UCMR 2 monitoring is proposed to occur during 2007–2011.This proposed action builds on the established structure of UCMR 1 and proposes some changes to the rule design. The primary changes to UCMR 1 include: Redesign of the Screening Survey for List 2 contaminants to increase the statistical strength of the sampling results by incorporating additional PWSs; updates to the lists of contaminants to be monitored and the analytical methods approved to conduct that monitoring; revisions to the ''data elements'' required to be reported; and some revisions to the implementation of the monitoring program to reflect ''lessons learned'' during UCMR 1. A systematic procedure for the determination of a Minimum Reporting Level (MRL) is also being proposed.

Implementation of today's proposed action would benefit the environment by providing EPA and other interested parties with scientifically valid data on the occurrence of these contaminants in drinking water, permitting the assessment of the population potentially being exposed and the levels of that exposure. These data are the primary source of occurrence and exposure data for the Agency to determine whether to regulate these contaminants.

DATES: Written comments must be postmarked by midnight, delivered by hand, or electronically mailed on or before October 21, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OW–2004–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Web site: *http://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: *OW-Docket@epa.gov.*
- Mail: Send three copies of your comments and any enclosures to: Water Docket, United States Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0001. Commenters should use a separate paragraph for each issue discussed. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- Hand Delivery: Deliver your comments to Water Docket, EPA Docket Center, Environmental Protection Agency, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2004–0001. 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. OW–2004–0001. 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, *http://www.regulations.gov,* or e-mail. The EPA EDOCKET and the *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 *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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102 (USEPA, 2002c)).

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 Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. This 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 Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Gregory Carroll, Technical Support Center, Office of Ground Water and Drinking Water, United States Environmental Protection Agency, Office of Water, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268, telephone (513) 569–7948; or e-mail at *carroll.gregory@epa.gov.* For general information, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities regulated by this action are public water systems (PWSs). All large community and non-transient non-community water systems serving more than 10,000 people will be required to monitor. A community water system means a PWS which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. Non-transient non-community water system means a PWS that is not a community water system and that regularly serves at least 25 of the same people over 6 months per year. Only a nationally representative sample of community and non-transient non-community systems serving 10,000 or fewer people will be required to monitor. Transient non-community systems (*i.e.*, systems that do not regularly serve at least 25 of the same people over 6 months per year) will not be required to monitor. States, territories, and tribes with primary enforcement responsibility (primacy) to administer the regulatory program for PWSs under the Safe Drinking Water Act (SDWA) may participate in the implementation of the second cycle of the Unregulated Contaminant Monitoring Regulation (*i.e.*, UCMR 2) through a Partnership Agreement. These Primacy agencies may choose to conduct analyses to measure for contaminants in water samples collected for the UCMR 2; in which case they will be regulated by this action. Regulated categories and entities are identified in the following table.

Category	Examples of potentially regulated entities	NAICS [a]
State, local, & tribal governments	States, local and tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; states, local and tribal governments that directly operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[a] NAICS = North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware may potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the definition of PWS in § 141.2 of Title 40 of the Code of Federal Regulations, and applicability criteria in § 141.40(a)(1) and (2) of today's proposed action. 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. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting Confidential Business Information

Do not submit this information to EPA through EDOCKET, *http://www.regulations.gov*, or e-mail. Clearly mark the part or all of the information that you claim to be confidential business information (CBI). For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Abbreviations and Acronyms

245–HBB 2,2′,4,4′,5,5′-hexabromobiphenyl
µg/L Microgram per liter
ADI Acceptable daily intake
ASDWA Association of State Drinking Water Administrators
ATSDR Agency for Toxic Substances and Disease Registry
BDE–47 2,2′,4,4′-tetrabromodiphenyl ether
BDE–99 2,2′,4,4′,5-pentabromodiphenyl ether
BDE–100 2,2′,4,4′,6-pentabromodiphenyl ether
BDE–153 2,2′,4,4′,5,5′-hexabromodiphenyl ether
CBI Confidential Business Information
CCL Contaminant Candidate List
CF Concentration fortified
CFR Code of Federal Regulations
CWS Community water system
DBP Disinfection Byproduct
DBPR Stage 1 Disinfection Byproducts Rule
DEA Desethylatrazine
DACT Diaminochlorotriazine or Desethyldesisopropylatrazine.
DIA Desisopropylatrazine
DQO Data quality objective
DSMRT Distribution system maximum residence time
EPA United States Environmental Protection Agency
EPTDS Entry point to the distribution system
ESA Ethane sulfonic acid
FACA Federal Advisory Committee Act
FR **Federal Register**
FS Field sample
g/kg Gram per kilogram
GWUDI Ground water under the direct influence of surface water
HR_{PIR} Half range prediction interval of results
HSDB Hazardous Substances Database

IARC International Agency for Research on Cancer
ICR Information collection request
IDC Initial demonstration of capability
IRIS Integrated Risk Information System
LCMRL Lowest concentration minimum reporting level
LD_{50} Median lethal dose
LFSM Laboratory fortified sample matrix
LFSMD Laboratory fortified sample matrix duplicate
MCL Maximum contaminant level mg/kg Milligram per kilogram
mg/kg/day Milligram per kilogram per day mg/L Milligram per liter
MRL Minimum reporting level
NCOD National Drinking Water Contaminant Occurrence Database
NDBA N-nitroso-di-n-butylamine
NDEA N-nitroso-diethylamine
NDMA N-nitroso-dimethylamine
NDPA N-nitroso-di-n-propylamine
NMEA N-nitroso-methylethylamine
NPDWR National Primary Drinking Water Regulation
NPYR N-nitroso-pyrrolidine
NTNCWS Non-transient non-community water system
NTTAA National Technology Transfer and Advancement Act
OA Oxanilic acid
OMB Office of Management and Budget
ORD Office of Research and Development
PA Partnership agreement
PBB Polybrominated biphenyls
PBDE Polybrominated diphenyl ethers pH Negative log of the hydrogen ion concentration
PIR Prediction interval of results
PT Proficiency testing
PWS Public water system
PWSID Public water system identification
QC Quality control
RDX Hexahydro–1,3,5-trinitro–1,3,5–triazine
RED Reregistration Eligibility Decision
RFA Regulatory Flexibility Act
RfD Reference dose
RPD Relative percent difference
SBA Small Business Administration
SDWA Safe Drinking Water Act
SRF State Revolving Fund
TBBPA Tetrabromobisphenol A
TDI Tolerable daily intake
TNT 2,4,6–trinitrotoluene
TRI Toxics Release Inventory
UCMR Unregulated Contaminant Monitoring Regulation
UMRA Unfunded Mandates Reform Act of 1995
USGS United States Geological Survey
USEPA United States Environmental Protection Agency

Table of Contents

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
1. Submitting Confidential Business Information
2. Tips for Preparing Your Comments
II. Statutory Authority and Background
A. What Is the Statutory Authority for UCMR?
B. How Does EPA Meet These Statutory Requirements?
C. How Are the Contaminant Candidate List, the National Contaminant Occurrence Database, and the UCMR Interrelated?
III. Requirements of the Unregulated Contaminant Monitoring Program
A. What Priority Contaminants Were Selected for UCMR 2?
1. Compilation of Initial List of UCMR 2 Candidates
2. Establishing Priorities for UCMR 2
a. Health Effects Prioritization Approach.
b. Selections Based on UCMR 1 Reserved Contaminants List.
i. Alachlor ethane sulfonic acid (ESA) and Other Degradation Products of Acetanilide Pesticides—List 2.
ii. Explosives—List 1.
c. Selections from UCMR 1 Contaminants List.
d. Selection of Emerging Contaminants.
i. Nitrosamines—List 2.
ii. Others Identified in CCL 1 Process and Recent Reviews of Information on Emerging Contaminants—List 1.
3. Other Considerations in Selecting Contaminants
a. Triazine Chlorodegradates and Parent Compounds.
b. Other Contaminants Considered.
B. What Analytical Methods Will Be Used for Monitoring?
C. How Were These Analytical Methods Developed?
D. How Were Minimum Reporting Levels Determined?
E. How Will Laboratories Conduct UCMR Analyses?
1. Laboratory Approval Process for UCMR 2
a. Request to Participate.
b. Registration.
c. Application Package.
d. EPA Review of Application Package.
e. Proficiency Testing.
f. Written EPA Approval.
2. Quality Control Requirements
F. How Are Systems Selected for UCMR Monitoring?
1. How Are Systems Selected for Assessment Monitoring?
a. Original Assessment Monitoring Statistical Approach for UCMR 1.
b. Proposed Assessment Monitoring Statistical Approach for UCMR 2.
2. How Are Systems Selected for the Screening Survey?
a. Original Screening Survey Statistical Approach for UCMR 1.
b. Proposed Screening Survey Statistical Approach for UCMR 2.
3. What Is UCMR Pre-Screen Testing?
4. What Are the Other Applicability Considerations?
a. New Applicability Date.
b. Notice Regarding Changes to Applicability Required.
c. Definition of System Population.
G. When Must Monitoring Be Conducted?
1. Timing of Monitoring
2. Individual PWS Monitoring Schedules
H. Where Are Samples Collected?
I. What Is the States' Role in the UCMR Program?
1. State Participation in Partnership Agreements (PAs)
2. Activities To Be Included in the UCMR 2 PAs
a. Review and Revision of the Initial State Monitoring Plan.
b. Review and Approval of PWS Proposed Representative EPTDS.
c. Notification and Instructions for Systems.
3. What If States Do Not Participate in a PA?
J. What Are the Data Reporting Requirements?
1. What Information Is Required Prior to Monitoring?
a. Contact Information.
b. Sampling Location and Inventory Information.
c. Proposals for Ground Water Representative Sampling Locations.
2. When Must Monitoring Results Be Reported?
a. Large Systems.
b. Small Systems.
3. What Data Elements Are Required with the Monitoring Results?
a. New Data Elements.
b. Unchanged Data Elements.
c. Modified Data Elements.
d. Data Elements No Longer Reported.
K. Time Line of UCMR Activities
1. Assessment Monitoring
2. Screening Survey
IV. Cost and Benefits of Today's Proposed Action
V. Technical Corrections
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
VII. Public Involvement in Regulation Development
VIII. References

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

§ 141.24 Organic chemical, sampling and analytical requirements.

§ 141.35 Reporting for unregulated contaminant monitoring.
(a) General applicability.
(b) Reporting by all systems.
(1) Where to submit UCMR reporting requirement information.
(2) Contacting EPA if your system does not meet applicability criteria or has status change.
(c) Reporting by large systems.
(1) Contact information.
(2) Sampling location and inventory information.
(3) Proposed ground water representative sampling locations.
(i) Qualifications.
(ii) Demonstration.
(iii) Approval.
(4) Contacting EPA if your PWS has not been notified of requirements.
(5) Notifying EPA if your PWS cannot sample according to schedule.
(6) Reporting monitoring results.
(i) Electronic reporting system.
(ii) Reporting schedule.
(7) Only one set of results accepted.
(8) No reporting of previously collected data.
(d) Reporting by small systems.
(1) Contact information.
(2) Reporting sampling information.
(e) Data elements.
§ 141.40 Monitoring requirements for unregulated contaminants.
(a) General applicability.
(1) Applicability to transient non-community systems.
(2) Applicability to community water systems and non-transient non-community water systems.
(i) Large systems.
(ii) Small systems.
(3) Analytes to be monitored.
(4) Sampling requirements.
(i) Large systems.
(ii) Small systems.
(5) Quality control requirements.
(i) Sample collection/preservation.
(ii) Laboratory approval for Lists 1 and 2.
(iii) Minimum Reporting Level.
(iv) Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate.
(v) Detection Confirmation.
(vi) Method defined quality control.
(vii) Reporting.
(6) Violation of this rule.
(i) Monitoring violations.
(ii) Reporting violations.
(b) Requirements for State and Tribal participation.
(1) Governors' petition for additional contaminants.
(2) State-wide waivers.
(i) Application.
(ii) Approval.

List of Exhibits and Tables

Preamble
Exhibit 1: Proposed Contaminant List and Sampling Design
Exhibit 2: Summary of Proposed Major Changes to UCMR 1
Exhibit 3: Median Lethal Dose and Corresponding Toxicity Ranking
Exhibit 4: Comparison of Acetanilide Herbicides Use
Exhibit 5: Analytes Included in the Explosives Method (EPA 529)
Exhibit 6: Analytical Methods Proposed for UCMR 2 Monitoring
Exhibit 7: Approximate Sample Allocation for Assessment Monitoring: Expected Number of Systems Selected by System Size and Water Source
Exhibit 8: UCMR 1 Design Allocation of Systems for Screening Surveys, by Size Category
Exhibit 9: Allocation of Systems for Screening Survey, List 2 Contaminants
Exhibit 10: Time Line of UCMR Activities
Exhibit 11: Systems To Participate in UCMR 2 Monitoring
Exhibit 12: Number of Publicly- and Privately-Owned Systems Subject to UCMR 2
Exhibit 13: EPA and Small Systems Costs for Implementation UCMR 2
Exhibit 14: UCMR 2 Relative Cost Analysis for Publicly-Owned Systems (2007–2011)
Exhibit 15: UCMR 2 Relative Cost Analysis for Privately-Owned Systems (2007–2011)
§ 141.35
Table 1. Unregulated Contaminant Monitoring Reporting Requirements
§ 141.40
Table 1. UCMR Contaminant List
Table 2. Monitoring Frequency by Contaminant and Water Source Types
Table 3. The Constant Factor (C) to be Multiplied by the Standard Deviation to Determine the Half Range Interval of the PIR (Student's t 99% Confidence Level)

II. Statutory Authority and Background

A. What Is the Statutory Authority for UCMR?

Section 1445(a)(2) of the Safe Drinking Water Act (SDWA), as amended in 1996, requires that once every five years, beginning in August 1999, the United States Environmental Protection Agency (EPA) issue a new list of no more than 30 unregulated contaminants to be monitored by PWSs, and that EPA enter the monitoring data into a national contaminant occurrence database. EPA's UCMR program must ensure that only a national representative sample of public water systems (PWSs) serving 10,000 or fewer people will be required to monitor; however, there are no such restrictions on the number of systems serving more than 10,000 people. EPA must vary the frequency and schedule for monitoring based on the number of systems served, the source of supply, and the contaminants likely to be found.

B. How Does EPA Meet These Statutory Requirements?

To fulfill the initial SDWA requirements, EPA published ''Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule,'' on September 17, 1999 (64 FR 50556, (USEPA, 1999c)). Several supplemental rules were published to establish analytical methods and to provide clarifications and refinements to the initial rule: 65 FR 11372, March 2, 2000 (USEPA, 2000a); 66 FR 2273, January 11, 2001 (USEPA, 2001a); and 67 FR 65888, October 29, 2002 (USEPA, 2002d).[1] SDWA, as amended in 1996, requires that at least once every five years EPA identify a list of no more than 30 unregulated contaminants to be monitored. Today's action fulfills this statutory obligation, identifying 26 priority contaminants for monitoring using nine proposed analytical methods. To comply with SDWA, EPA has developed a proposed contaminant list (Exhibit 1) and sampling design for UCMR 2 (2007–2011) with input from both stakeholders and an EPA working group.

EXHIBIT 1.—PROPOSED CONTAMINANT LIST AND SAMPLING DESIGN

List 1. Assessment Monitoring

1,3-dinitrobenzene	2,4,6-trinitrotoluene (TNT).
2,2′,4,4′-tetrabromodiphenyl ether (BDE–47)	Dimethoate.
2,2′,4,4′,5-pentabromodiphenyl ether (BDE–99)	Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX).
2,2′,4,4′,5,5′-hexabromobiphenyl (245–HBB)	Terbufos sulfone.
2,2′,4,4′,5,5′-hexabromodiphenyl ether (BDE–153)	Perchlorate.

[1] Additional technical corrections to the rule, as well as adjustments to the initial reporting process, were published including: May 16, 2001 (66 FR 27215 (USEPA, 2001b)); September 4, 2001 (66 FR 46221 (USEPA, 2001d)); and March 12, 2002 (67 FR 11043 (USEPA, 2002b)). In total, these rules and revisions constitute the ''UCMR 1.'' This amendment to establish new contaminants for monitoring during the second five-year cycle is referred to as ''UCMR 2.''

EXHIBIT 1.—PROPOSED CONTAMINANT LIST AND SAMPLING DESIGN—Continued

2,2′,4,4′,6-pentabromodiphenyl ether (BDE–100)	

List 2. Screening Survey

Acetochlor	Metolachlor OA.
Acetochlor ESA	N-nitroso-diethylamine (NDEA).
Acetochlor OA	N-nitroso-dimethylamine (NDMA).
Alachlor	N-nitroso-di-n-butylamine (NDBA).
Alachlor ESA	N-nitroso-di-n-propylamine (NDPA).
Alachlor OA	N-nitroso-methylethylamine (NMEA).
Metolachlor	N-nitroso-pyrrolidine (NPYR).
Metolachlor ESA	

The UCMR for the first cycle of monitoring (*i.e.*, UCMR 1) established a three-tiered approach for monitoring contaminants based on the availability of analytical methods. Assessment Monitoring contaminants on List 1 (UCMR 1) could be analyzed using analytical methods that were in common use in drinking water laboratories. Screening Survey contaminants on List 2 (UCMR 1) could only be analyzed using newly developed analytical methods that were not in common use in drinking water laboratories. Laboratory capacity to perform these analyses was therefore limited. No analytical methods were available to monitor for the Pre-Screen Survey contaminants on List 3 (UCMR 1), although the regulation allowed for the possibility of such methods becoming available during the cycle.

EPA has developed the design for the second UCMR cycle (*i.e.*, UCMR 2). EPA is building upon the established structure of UCMR 1, and proposing some changes to the rule design, based upon lessons learned during the UCMR 1 cycle. The design of UCMR 2 is summarized below, including a discussion of the changes proposed for UCMR 2, and the reasons for those proposed changes.

Assessment Monitoring (*i.e.*, List 1) is the largest in scope of the three UCMR 2 monitoring components (or tiers). Under Assessment Monitoring, List 1 contaminants, for which standard analytical methods are available, are monitored to assess national occurrence in drinking water. These are the priority contaminants for which analytical method technologies are well established. EPA is proposing that Assessment Monitoring be required for all large water systems (those serving more than 10,000 people), and for a nationally representative sample of 800 small water systems (those serving 10,000 or fewer people), during a continuous 12-month period during July 2007 through June 2010 quarterly for surface water systems, and twice, at 6-month intervals for ground water systems). Systems subject to UCMR 2 include community water systems (CWSs) and non-transient non-community water systems (NTNCWSs), except those systems that purchase all of their finished water from another PWS.

EPA designed the sampling frame for the national sample of small systems to ensure that UCMR 2 sampling results would yield a high level of confidence and a low margin of error. To attain the representative sample, EPA is proposing that small systems be stratified by water source type (ground or surface water), service size category, and State (each allocated a minimum of two systems). With monitoring data from all large PWSs (a census of all 3,110 large systems) and a statistically representative sample of 800 small PWSs (for a total of approximately 3,910 systems), List 1 Assessment Monitoring provides sample data suitable for national population exposure assessments.

The second tier of UCMR 2 is referred to as List 2 or Screening Survey monitoring. List 2 contaminants are those for which analytical methods have been recently developed, and for which the technologies are not widely used and, therefore, laboratory capacity may be insufficient to conduct the larger scale Assessment Monitoring. EPA is proposing that a Screening Survey be conducted by approximately 320 PWSs serving more than 100,000 people (*i.e.*, all systems in this largest size category), by a randomly selected sample of 320 PWSs serving between 10,001 and 100,000 people, and by 480 small PWSs. Screening Survey systems will be required to monitor during a continuous 12-month period during July 2007 through June 2009 quarterly for surface water systems, and twice, at 6-month intervals, for ground water systems). With a total of over 1,100 systems participating in the Screening Survey, sufficient data will be generated to provide an overall national estimate of population exposure.

The third tier of UCMR 2 is called Pre-Screen Testing. Pre-Screen Testing is envisioned for use with methods that are in the early stages of development, and/or methods that are very specialized or limited in applicability. It is designed to be conducted by up to 200 PWSs that would be identified by State agencies as vulnerable to the List 3 contaminants. This would be a targeted sampling to assess occurrence in the most vulnerable settings, and could help to guide the next steps for contaminant evaluation and methods development. EPA is not proposing any Pre-Screen Testing in today's action.

C. How Are the Contaminant Candidate List, the National Contaminant Occurrence Database, and the UCMR Interrelated?

The UCMR program was developed in coordination with the Contaminant Candidate List (CCL) and the National Drinking Water Contaminant Occurrence Database (NCOD). The CCL is a list of contaminants that are not subject to any proposed or promulgated National Primary Drinking Water Regulation (NPDWR), are known or anticipated to occur at PWSs, and may require regulation under SDWA. The first CCL, published in March 1998 (referred to as ''CCL 1''), identified 60 contaminants or contaminant groups (63 FR 10274, March 2, 1998 (USEPA, 1998b)) that were divided into categories to represent research and data needs for each of the following: (1) Regulatory determination priorities; (2) health effects research priorities; (3) treatment research priorities; (4) analytical methods research priorities; and (5) occurrence priorities. The data collected through the UCMR program is being stored in the NCOD to facilitate analysis and review of contaminant occurrence; to guide the conduct of the CCL process; and to support the Administrator's determination to regulate a contaminant in the interest of protecting public health, as required under SDWA section 1412(b)(1). Results of the UCMR 1 monitoring can be

viewed by the public at EPA's UCMR Web site: *http://www.epa.gov/safewater/ucmr/data.html*. The second CCL was published in February 2005 and carried over many of the unregulated contaminants from CCL 1, for which research is ongoing (70 FR 9071, February 24, 2005 (USEPA, 2005).

III. Requirements of the Unregulated Contaminant Monitoring Program

EPA has developed, and is proposing in today's action, a revised design for UCMR 2 based on experience with UCMR 1. In addition to requesting comments on the list of UCMR 2 contaminants, EPA is also requesting comments on the Agency's specification of minimum reporting levels (MRLs) and the procedure to establish them. Other changes for which EPA is requesting comment include modifications or clarifications to the systems required to monitor, the timing and location of monitoring, and the reporting process. Today's proposed modifications to the rule also incorporate lessons learned during the course of UCMR 1 implementation. Throughout UCMR 1, EPA worked with States, regulated PWSs, and analytical laboratories in addressing implementation and regulatory requirements. EPA reviewed various aspects of the UCMR 1 program and identified several critical changes that will improve implementation. The specific approach that EPA is proposing for UCMR 2, along with the rationale for any changes, is described in this section.

Exhibit 2 provides a list of the substantive changes to UCMR 1 being proposed in today's action. EPA invites the public to comment on these changes to the UCMR program. Instructions for submission of public comments are provided in the **ADDRESSES** section of this preamble. Key aspects of the UCMR program that remain the same include direct implementation of the rule by EPA, the design of Assessment Monitoring, and EPA funding for the small system testing (*i.e.*, for those systems serving 10,000 or fewer people).

Although EPA is republishing the entire text of 40 CFR 141.35 and 40 CFR 141.40 of today's action for readability purposes, EPA is not reproposing for public comment aspects of the rule that are unchanged from the 1999 UCMR 1. The unchanged aspects of UCMR 1 include: (1) The design of Assessment Monitoring (for List 1 contaminants), except for the elimination of Index Systems, and Pre-Screen Testing (for List 3 contaminants); (2) the frequency of sampling; (3) the requirement to resample when a sampling error occurs; (4) use of the largest concentration when duplicate samples are reported; (5) the requirements for laboratories to enter monitoring data, and large PWSs to approve and submit data using EPA's electronic data reporting system; (6) reporting of PWS contacts; (7) the definition of violations; (8) the opportunity for State and Tribes to enter into Partnership Agreements; (9) the Governors' petition process; and (10) the State-wide waiver provision. EPA is not seeking, and will not respond to comments on parts of the UCMR that are unchanged under today's action.

EXHIBIT 2.—SUMMARY OF PROPOSED MAJOR CHANGES TO UCMR 1

Change	Preamble	Rule
New list of 26 priority contaminants, and 9 analytical methods	Contaminants: III.A.; Analytical Methods: III.B.; III.C.	§ 141.40(a)(3).
Modified laboratory approval program	III.E.1	§ 141.40(a)(5)(ii)–(vi).
QC requirements: Detection limit would be replaced by MRL; No longer required to analyze a field reagent blank or QC sample.	III.E.2	§§ 141.40(a)(5)(iii)–(v).
Changes in timing for posting and approval of monitoring data	III.E.2; III.J.2	§ 141.35(c)(6)(ii); § 141.40(a)(5)(vii).
Elimination of Index systems	III.F.1.b	§ 141.40(a)(2)(ii)(C).
More systems to monitor for Screening Survey	III.F.2	§ 141.40(a)(2)(i)(B); § 141.40(a)(2)(ii)(B).
Screening Survey monitoring to be conducted across 2 years	III.F.2.b; III.K.2	§ 141.40(a)(3).
Establishment of date for rule applicability; Clarification of system population definition.	III.F.4	§ 141.35(a); § 141.40(a).
Large systems must submit contact and sampling location information	III.J.1.a	§ 141.35(b)(1).
Large system monitoring will be scheduled by EPA with allowance for systems to change schedule if needed.	III.G.2	§ 141.35(c)(5); § 141.40(a)(4)(i).
All samples collected at EPTDSs; nitorsamines samples for PWSs subject to Stage 1 D/DBP Rule collected at DSMRT and EPTDS locations; Representative EPTDS proposals by PWSs with multiple ground water EPTDSs.	III.H; III.J.1.b	Monitor at EPTDS and DSMRT locations: § 141.40(a)(3); § 141.40(a)(4)(i)(C); § 141.40(a)(4)(ii)(B). EPTDS proposal: § 141.35(c)(3).
Changes to data elements	III.J.3	§ 141.35(e).

Acronyms: QC = quality control; MRL = minimum reporting level; PWS = public water system; EPTDS = entry point to the distribution system; D/DBP Rule = Stage 1 Disinfectant/Disinfection Byproducts Rule; DSMRT = distribution system maximum residence time; UCMR = Unregulated Contaminant Monitoring Regulation.

A. What Priority Contaminants Were Selected for UCMR 2?

1. Compilation of Initial List of UCMR 2 Candidates

With public health protection as its top priority, EPA has drawn upon several different sources in developing the proposed UCMR 2 contaminant list. In the early stages of list development, EPA began by identifying a broad list of over 200 contaminants. This information and rationale was first presented at a public stakeholder meeting held on October 29, 2003, within a draft discussion document titled: ''UCMR 2: Contaminant Selection Rationale'' (USEPA, 2003e). The following sources were used to identify potential UCMR 2 contaminants:

- *UCMR 1 ''reserved'' contaminants (CCL 1 occurrence priorities):* Includes those contaminants identified as priorities in the September 1999 UCMR (64 FR 50556 (USEPA, 1999c)), but reserved for later monitoring because methods were not yet available. By design, most of the UCMR 1 contaminants were selected from the list of CCL 1 contaminants that required the

collection of additional occurrence data and for which analytical methods were available (63 FR 10274 (USEPA, 1998b)).

• *Other UCMR 1 contaminants:* Includes several contaminants that were monitored under UCMR 1 and were identified as potential UCMR 2 priorities because Screening Survey results indicate the need for more information, or because improved analytical methods for these contaminants have been developed since the last cycle.

• *CCL 1 ''deferred pesticides'':* Includes a list of priority pesticides ranked by chemical properties, occurrence, and use that EPA identified. EPA decided to ''defer'' certain pesticides for later consideration pending further evaluation of these pesticides to determine if they occur at levels of health concern (62 FR 52194, October 6, 1997 (USEPA, 1997)). EPA plans to consider the deferred pesticides in the context of an improved approach for selecting contaminants for future CCLs. This will enable the Agency to consider these contaminants in a consistent, reproducible manner with a wide range of other contaminants.

• *CCL 1 suspected endocrine disruptors:* Includes a list of chemicals that were suspected of having adverse effects on endocrine function (62 FR 52194, October 6, 1997 (USEPA, 1997)) that EPA identified during the development of CCL 1. For certain suspected endocrine disruptors for which little information was available, EPA decided to wait for further study to reconsider these contaminants in the future. As with pesticides, EPA believes that suspected endocrine disruptors should be considered in the context of an improved approach for selecting contaminants for future CCLs. This enables the Agency to use a more refined and improved approach in evaluating these contaminants.

• *Other emerging contaminants:* Includes additional contaminants of concern based on current research on occurrence and relative health effects risk factors, and whether the contaminants could be identified by analytical methods used in measuring other priority UCMR contaminants.

2. Establishing Priorities for UCMR 2

Of the 200-plus contaminants initially identified, EPA retained only those contaminants that met the following criteria: (1) Pesticides on the list must be currently registered for use in the United States; (2) all contaminants must have an analytical reference standard (pure compound) available; and (3) the analytical method must be available. Based on these criteria, the list was reduced to approximately 127 contaminants.

EPA further prioritized this list of contaminants as follows. The relative health effects screening was considered as part of EPA's identification of contaminants for monitoring under UCMR 2 (the relative effects screening and prioritization process is discussed and explained in next section). Through this prioritization process, 26 contaminants have been identified for UCMR 2 monitoring. At the current time, EPA does not expect to add contaminants to reach the statutory maximum of 30 contaminants. However, if other emerging contaminant(s) advance in importance during the first part of UCMR 2 monitoring, EPA will consider an amendment that would add up to four additional contaminants for monitoring in a later phase of the cycle. The remainder of this section discusses the specific selection of contaminants that EPA is proposing for UCMR 2 monitoring.

a. *Health Effects Prioritization Approach.* In identifying contaminants for monitoring under the UCMR program, potential human health effects are an important consideration. Therefore, after compiling a broad list of potential UCMR contaminants, EPA's next step was to develop a process to prioritize these contaminants by estimating their relative adverse health effects. EPA first collected existing health effects information, including Reference Dose (RfD), Tolerable Daily Intake (TDI), Acceptable Daily Intake (ADI), Cancer Unit Risk, Cancer Classification, and Median Lethal Dose (LD_{50}). Using this information, EPA developed a screening system to rank contaminants into high, medium, and low relative priorities.

In developing the relative rankings, EPA recognized two tiers of data for the assessment of non-cancer toxicity, based on applicability to human health effects: (1) RfD (and its equivalents); and (2) LD_{50}. The RfD and equivalent measures such as TDI and ADI are doses that are expected to have no measurable health effects on the human population, including sensitive populations. These levels are based on expert judgment of the available research data. The LD_{50}, on the other hand, is the result of observation of effects in experimental studies (*i.e.,* the concentration at which 50% of experimental animals die) and has not been extrapolated for application to human populations. Many compounds have measured LD_{50} values, but significantly fewer have calculated RfDs. In prioritizing compounds for inclusion in UCMR, EPA refers to RfD (and equivalent data) as ''potency data'', while LD_{50} data are referred to as ''toxicity data.''

As with the two tiers of data for non-cancer toxic effects, cancer information is analogously divided into two tiers. The higher tier of data, known as ''Unit Risk,'' represents the risk of developing cancer from a given drinking water concentration. The second tier of data, the ''Cancer Classification,'' categorizes the likelihood of a compound contributing to the human cancer burden and is a purely qualitative measure. Thus, it is generally less informative than Unit Risk data.

RfDs were typically obtained from EPA's Integrated Risk Information System (IRIS) or the Office of Pesticide Programs' Reregistration Eligibility Decisions (REDs). The ADIs were typically identified through the International Programme on Chemical Safety or the European Agency for the Evaluation of Medicinal Products Web sites. TDIs were identified through World Health Organization and the Netherlands Institute of Health Sciences sources. If an RfD or equivalent could not be identified, attempts were made to obtain an oral LD_{50} or other relevant information from sources such as the Hazardous Substances Database (HSDB) and primary literature. Cancer Unit Risk information was typically obtained from IRIS or REDs, while cancer classifications were found in IRIS, REDs, and from the International Agency for Research on Cancer (IARC).

To develop a ranking for each contaminant, compounds with potency data were assigned values from 1 to 10 based on equations derived empirically from the distribution of RfDs for the compounds listed on IRIS. Details concerning the derivations of these equations are contained in a support document titled ''Estimating Potency Scores: An Exercise'' (USEPA, 2004h). Contaminant prioritization estimates were discussed at a public stakeholder meeting held on October 29, 2003; the estimates are contained in an additional support document titled: ''UCMR 2: Contaminant Selection Rationale'' (USEPA, 2003e). One equation was derived for RfD and equivalent data, and one for cancer Unit Risk data. The distribution of RfD values was log-normally distributed, and the following equation was used to score compounds:

$$\text{Non-cancer risk} = 10 - (\text{rounded } \log_{10} \text{RfD} + 7)$$

To score compounds on a relative scale of 1 to 10, EPA examined the distribution of unit risks for the compounds found in the ''2002 Drinking Water Standards and Health

Advisories'' (USEPA, 2002a), and used the following equation:

Cancer Risk = 10 − ((rounded $\log_{10}$ 10^{-4} cancer risk) + 6)

Contaminants with resulting scores from each of these equations of 1–3 were considered relatively lower priority, those with scores of 4–6 were considered of medium relative priority, and scores of 7–10 were considered to be of high relative priority. In the case of compounds for which both cancer and non-cancer data were available, the data associated with the highest relative score were used for prioritization.

Compounds with toxicity data were ranked by a separate system based on $LD_{50,}$ and this ranking was modified by cancer classification where possible. Exhibit 3 summarizes the criteria that were used to rank compounds by $LD_{50.}$

EXHIBIT 3.—MEDIAN LETHAL DOSE AND CORRESPONDING TOXICITY RANKING

Relative toxicity ranking	LD_{50} data
Very High	≤1 mg/kg [1]
High	>1 mg/kg − ≤50 mg/kg
Moderate	>50 mg/kg − ≤500 mg/kg
Slight	>500 mg/kg − ≤5 g/kg [2]

[1] mg/kg = milligram per kilogram.
[2] g/kg = gram per kilogram.

Additionally, if a chemical meeting the ''slight'' criteria was also noted as ''possibly carcinogenic to humans'' (Group 2B), the chemical was moved up one level to ''moderate.'' For example, 2,2′,4,4′,5,5′-hexabromobiphenyl toxicity should be categorized as slight based on an identified oral LD_{50} in rats of 21,500 milligrams per kilogram (mg/kg). However, because IARC categorized this chemical as ''possibly carcinogenic to humans,'' it now is categorized as moderate.

b. *Selections Based on UCMR 1 Reserved Contaminants List.* One of EPA's priorities for UCMR 2 is to monitor for contaminants that were identified as priorities for monitoring during UCMR 1, but were ''reserved'' because analytical methods were not available at the time. Applying these criteria, two UCMR 1 ''reserved'' contaminants are priorities for UCMR 2: alachlor ethane sulfonic acid (alachlor ESA) (and other acetanilide pesticide degradation products) and hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX), an explosive. The first is a contaminant group that is comprised of multiple contaminants, as further discussed in this section. Both alachlor ESA (and other degradation products of acetanilide pesticides) and RDX were included on UCMR 1, List 2, but because the required analytical methods were not available in time for UCMR 1 monitoring they were listed as ''reserved.''

i. Alachlor ethane sulfonic acid (ESA) and Other Degradation Products of Acetanilide Pesticides—List 2.

Based on the rationale provided below, EPA is proposing that the following six degradation products of acetanilide pesticides and their parent compounds be part of the UCMR 2, List 2, Screening Survey monitoring:

- Acetochlor
- Acetochlor ESA
- Acetochlor OA
- Alachlor
- Alachlor ESA
- Alachlor OA
- Metolachlor
- Metolachlor ESA
- Metolachlor OA

The proposed List 2 analytes include the ethane sulfonic acid (ESA) and oxanilic acid (OA) degradation products of the three highest-use parent acetanilide compounds: metolachlor, alachlor, and acetochlor (see Exhibit 4). In addition, EPA is proposing that List 2 include the parent compounds, acetochlor, alachlor and metolachlor, because one possible option for regulating these compounds and their degradates would be to establish maximum contaminant levels (MCLs) for the total of each parent plus its respective metabolites.

There are a number of reasons why EPA has prioritized alachlor ESA (and other degradation products of acetanilide pesticides) for inclusion in UCMR 2 monitoring. This group of acetanilide degradation products was originally listed under the CCL 1 occurrence priorities and then included as part of UCMR 1, List 2 as ''reserved''; thus the group is a top priority for UCMR 2 monitoring. In addition, ambient water monitoring data indicate that occurrence of the acetanilide degradation products (ESA and OA) is more widespread than that of the parent compounds.

Inclusion of the parent acetanilides on List 2 monitoring will potentially allow EPA to learn more about the extent of decomposition of the parent compounds, and about levels of co-occurrence of the parents and their degradation products. The parent acetanilides are widely used herbicides applied for weed control on corn, soybean, and other crops (see Exhibit 4). Acetochlor and metolachlor were both included on the final CCL 1 priority list. Acetochlor was identified as a CCL 1 occurrence priority, and was monitored under UCMR 1, List 1, Assessment Monitoring. Metolachlor and its degradation products were identified in the list of candidates for regulatory determination under the CCL 1 prioritization process. However, EPA has since determined that available health effects and occurrence information were insufficient to support a regulatory determination.

Health effects studies have shown that chronic oral exposure to parent acetanilide herbicides may have effects such as increased salivation, decreased body weight, cellular/kidney/testicular pathology, enlarged liver, and anemia in animal subjects (USEPA, 2003d). RfDs established by EPA for these parent herbicides are 0.01 milligrams per kilograms per day (mg/kg/day) for alachlor, 0.02 mg/kg/day for acetochlor, and 0.15 mg/kg/day for metolachlor (USEPA, 2003d). Based on animal studies, the carcinogenic potentials of the parent acetanilide herbicides in humans are estimated to be: acetochlor and metolachlor, ''possible carcinogen'' (59 FR 13654, March 23, 1994 (USEPA, 1994); 61 FR 10681, March 15, 1996 (USEPA, 1996a); and USEPA, 2003d); and alachlor, ''probable carcinogen'' (USEPA, 2004a). The NPDWR for alachlor includes an maximum contaminant level goal of zero (due to classification as a probable carcinogen) and an MCL of 0.002 milligrams per liter (mg/L). EPA notes that alachlor is currently regulated under the National Primary Drinking Water Standards. EPA is proposing the collection of alachlor occurrence data in UCMR 2 concurrent with the collection of data for the alachlor degradation products to determine the degree of correlation between the parent compound and degradate occurrence.

EXHIBIT 4.—COMPARISON OF ACETANILIDE HERBICIDES USE [1]

Compound	Year registered	~Early 1990s annual use (million lb a.i.) –EPA [2]	~1992 annual use (million lb a.i.) –NCFAP [3]	~1997 annual use (million lb a.i.) –NCFAP	~1991–1995 annual use (million lb a.i.) –USGS [4]	~1995–1998 annual use (million lb a.i.) –USGS [4]
Metolachlor	1976	59 (1987–1993)	59.4	67.3	57.9	66.9
Alachlor	1969	29.3–44.6 (1993–1995)	51.6	15.2	25.7	15.1
Acetochlor	1994	—	—	32.6	23.8	32.6
Propachlor	1964	2.1 (1987–1996)	4.3	0.9	3.9	0.9
Dimethenamid	1993	—	—	6.0	2.6	6.0
Flufenacet	1998	—	—	—	—	—

[1] "—" = substance not in use; a.i. = active ingredient.
[2] EPA: *http://cfpub.epa.gov/oppref/rereg/status.cfm?show=rereg*.
[3] National Center for Food and Agricultural Policy (NCFAP): *http://www.ncfap.org/*.
[4] United States Geological Survey (USGS), national maps: *http://ca.water.usgs.gov/pnsp/*.
Note: Based on use amounts, EPA is proposing to monitor for the ESA and OA degradates of the three highest-use parent compounds: acetochlor, alachlor, and metolachlor. In addition, EPA is proposing to monitor for acetochlor, alachlor, and metolachlor.

ii. Explosives—List 1.

Based on the rationale provided below, EPA is proposing that the following three explosives compounds be part of the UCMR 2, List 1, Assessment Monitoring:

- Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
- 2,4,6-trinitrotoluene (TNT)
- 1,3-dinitrobenzene

RDX was a CCL 1 occurrence priority and was included on UCMR 1, List 2 as ''reserved,'' because analytical methods were not available in time for rule implementation. EPA has since developed a method for determining explosives in drinking water, thus allowing RDX to be included under UCMR 2 monitoring. RDX is absorbed by oral, dermal, and inhalation routes, and has been documented to cause central nervous system effects such as seizures, disorientation, nausea, restlessness, and lethargy. In addition, temporary anemia and leukocytosis after ingestion of RDX has been observed (ATSDR, 1995b). EPA has derived a chronic oral RfD for RDX of 0.0003 mg/kg/day, based on prostate inflammation observed in rats in a two-year feeding study (USEPA, 2003d), and has classified RDX as a possible human carcinogen (Group C), based on adenomas and carcinomas in female mice (USEPA, 2003d).

The ''explosives'' method can also be used to measure concentrations of at least 13 other contaminants in the same compound class (see Exhibit 5). A few that can be detected by this method were already monitored under UCMR 1 (nitrobenzene, 2,4-dinitrotoluene, and 2,6-dinitrotoluene). Of the remaining contaminants analyzed with the explosives method, the two with the highest relative health risk rankings are 2,4,6-trinitrotoluene (TNT) (possible carcinogen) and 1,3-dinitrobenzene (high relative health risk ranking). TNT and 1,3-dinitrobenzene were also identified during the CCL 1 development process on the working group's initial list of chemical contaminants considered during the development of the draft CCL (62 FR 52194 at 52201, October 6, 1997 (USEPA, 1997)).

TNT has been detected in surface and ground water samples that were collected near munitions facilities (ATSDR, 1995c). TNT typically co-occurs with RDX (Burrows, 1982). EPA has classified TNT as a possible human carcinogen (Group C) based on urinary bladder papilloma and carcinoma observed in female rats and activity observed in Salmonella, with and without metabolic activation (USEPA, 2003d). Based on TNT's co-occurrence with RDX and its possible carcinogenicity, EPA is proposing to include TNT for monitoring under UCMR 2.

1,3-dinitrobenzene is the only one of the explosive contaminants considered for UCMR 2 to have been assigned a ''high'' relative health risk ranking. The major clinical manifestations of oral exposure to 1,3-dinitrobenzene are hematologic, neurologic, endocrine, and reproductive (ATSDR, 1995a). EPA has derived a chronic oral RfD for this compound of 0.0001 mg/kg/day, based on increased weight of the spleen (USEPA, 2003d). EPA believes that a likely route of exposure to this compound is ingestion of contaminated drinking water (ATSDR, 1995a). Though no nationwide survey of occurrence has been conducted, local water and soil studies provide some indication of 1,3-dinitrobenzene occurrence in water. This compound has been detected in water and soil at some Army ammunition plants, including detection in ground water samples collected at an ammunition plant in Louisiana at concentrations ranging from 1.2 to 195 micrograms per liter (µg/L) (ATSDR, 1995a). It has also been found in 12 of the 1,397 hazardous waste sites on the National Priorities List; however, the total number of sites tested for 1,3-dinitrobenzene is unknown (ATSDR, 1995a). In a survey of ground water at 32 military installations, Walsh and colleagues (USEPA, 1999a) detected 1,3-dinitrobenzene in 13 percent of the 812 samples analyzed, with maximum concentrations of 8.7 µg/L and a median concentration of 0.78 µg/L. As the most toxic of the remaining explosives, EPA believes that 1,3-dinitrobenzene should be included for monitoring under UCMR 2.

EXHIBIT 5.—ANALYTES INCLUDED IN THE EXPLOSIVES METHOD (EPA 529)

Status	Analyte	Relative health rank [1]
To be monitored under UCMR 2, List 1	hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)	M(C)
	2,4,6-trinitrotoluene (TNT)	M(C)
	1,3-dinitrobenzene	H

EXHIBIT 5.—ANALYTES INCLUDED IN THE EXPLOSIVES METHOD (EPA 529)—Continued

Status	Analyte	Relative health rank [1]
Not Listed on CCL 1 and Not included on UCMR 2.	1,3,5-trinitrobenzene	M
	2,4,6-trinitrophenylmethylnitramine (Tetryl)	M
	2-amino-4,6-dinitrotoluene	L(S)
	2-nitrotoluene	L(S)
	3,5-dinitroaniline	na
	3-nitrotoluene	M(M)
	4-amino-2,6-dinitrotoluene	L(S)
	4-nitrotoluene	L(S)
Listed on CCL 1 and Monitored under UCMR 1.	2,4-dinitrotoluene	M
	2,6-dinitrotoluene	M
	nitrobenzene	M

[1] Relative Health Effects Rankings include: H = high priority based on potency data (RfD or equivalent); M = medium priority based on potency data (RfD or equivalent); M(C) = medium priority based on potency data (cancer unit risk); M(M) = medium priority based on toxicity data (contaminants with Moderate (M) toxicity are contained in this category); L(S) = low priority based on toxicity data (contaminants with Slight (S) toxicity are contained in this category); (na) = not available.

c. *Selections from UCMR 1 Contaminants List.* Perchlorate, the salts of which have a number of industrial applications, is primarily used in the form of ammonium perchlorate, an oxidizer in solid fuels that are used to power rockets, missiles, and fireworks. In 1997, a method was developed which greatly lowered the method reporting limit (MRL) for perchlorate from approximately 400 µg/L, down to 4 µg/L. Subsequent monitoring found perchlorate in ground water and drinking water at and above this level. Perchlorate was listed on EPA's CCL 1 out of concern for its occurrence and possible health effects and was monitored under UCMR 1 Assessment Monitoring using Method 314.0 (USEPA, 1999e), with a MRL of 4 µg/L.

EPA has improved the measurement capabilities of the perchlorate methods. Recently developed methods (EPA Method 314.1 (USEPA, 2004b); EPA Method 331.0 (USEPA, 2004c); and EPA Method 332.0 (USEPA, 2004d)) would allow collection of occurrence data with a substantially lower reporting level than that specified during UCMR 1. In addition, since publication of Method 314.0, new instrumentation has been made commercially available that can, using this method, achieve the MRL of 0.57 µg/L while meeting all of the quality control criteria of the method. Since Method 314.0 permits flexibility in the eluent, chromatographic column, and suppressor that are used, this new instrumentation is allowed within the scope of the method. In this notice, EPA will refer to Method 314.0 using this new instrumentation, which can achieve the lower MRL as ''Method 314.0 enhanced.'' EPA estimates that the average cost per sample for the new methods will be about $150, compared to $75 per sample using the original Method 314.0.

The National Academy of Sciences (NAS) has recently completed a review of available perchlorate health effects research. Perchlorate can affect thyroid function because it is an ion that competitively inhibits the transport of iodide into the thyroid. EPA has adopted the NAS recommended reference dose of 0.0007 mg/kg per day, which translates into a drinking water concentration of 24.5 µg/L, assuming a 70 kg body weight and 2 liters per day consumption. This assumes, however, that 100% of exposure comes from drinking water. An important step for EPA in considering whether to regulate perchlorate in drinking water is to determine what portion of perchlorate exposure may come from food and other sources and what portion from drinking water (referred to as relative source contribution or RSC). A higher exposure from food would mean a lower exposure from drinking water that would still be consistent with the NAS recommended reference dose.

EPA is considering whether to collect additional data on drinking water occurrence for perchlorate and if so, what method(s) and MRL should be required. The Agency already has substantial occurrence data for perchlorate from UCMR 1 using the original Method 314.0, which allowed for measurement of perchlorate at concentrations down to 4 µg/L. However, to inform future decisions regarding perchlorate, EPA sees advantages to gathering additional data on perchlorate using the newer methods. This additional information would provide a more complete understanding of perchlorate's occurrence in drinking water. For large systems, the new monitoring data would supplement data already collected by these systems under UCMR 1, while for small systems, a different random sample would be monitored. Further, additional data at lower reporting levels could inform EPA's cost estimates for a potential regulation by identifying drinking water systems that may want, as a practical matter, to target a somewhat lower level than the MCL in their control strategies. Finally, EPA believes the new methods are more reliable and respond to comments about the potential for false positives in the original Method 314.0. At the same time, EPA recognizes that there are costs associated with this additional monitoring, most of which would be incurred by drinking water utilities and their customers. The cost of an additional round of monitoring using the original method 314.0, with an MRL of 4 µg/L, would have been about half of the cost associated with the new methods and lower MRL. EPA estimates the total cost for a second round of perchlorate monitoring using the new methods to be $4.4 million over five years, of which about $4 million would be incurred by large drinking water utilities (an average of $1,200 per utility serving 10,000 persons or more), and $434,000 would be paid by EPA to analyze samples for small systems. EPA requests comment on its proposal to include perchlorate on the UCMR 2 list and on the appropriate methods and reporting level.

d. Selection of Emerging Contaminants. Ongoing research has identified other emerging contaminants that EPA believes are important to include on the UCMR 2 Contaminant List.

i. Nitrosamines—List 2.

EPA is proposing to include the following six nitrosamines on the UCMR 2, List 2, Screening Survey:

- N-nitroso-diethylamine (NDEA)
- N-nitroso-dimethylamine (NDMA)
- N-nitroso-di-n-butylamine (NDBA)
- N-nitroso-di-n-propylamine (NDPA)

• N-nitroso-methylethylamine (NMEA)
• N-nitroso-pyrrolidine (NPYR)

These six compounds are all considered by EPA to be probable human carcinogens, and have been assigned high relative health effects rankings (USEPA, 2003d). Animal studies provide evidence that many nitrosamines, including all of those being proposed for UCMR 2, target the liver when ingested orally. Nitrosamines also produce carcinogenic effects in the esophagus, lung, nasal cavity, stomach, and elsewhere when administered to animal subjects in drinking water; and many nitrosamines target the liver when ingested orally (USEPA, 2003d). Nitrosamines are produced in small amounts for research purposes, and can form as intermediates and byproducts in chemical synthesis and the manufacture of rubber, leather, and plastics. Four of the six proposed nitrosamines (all except N-nitroso-methylethylamine and N-nitroso-pyrrolidine) are listed on the Toxics Release Inventory (TRI),[2] which requires reporting of releases to the environment and other waste management data. Nitrosamines can also form spontaneously in the environment by the reaction of precursor amines with nitrosating agents (nitrate and related compounds), or by the action of nitrate-reducing bacteria. Common foods such as bacon and malt beverages can contain nitrosamines, and there is evidence that nitrosamines can form in the upper gastrointestinal tract (ATSDR, 1989). One nitrosamine, N-nitroso-dimethylamine (NDMA), has been shown to form in chlorinated or chloraminated water as a disinfection byproduct (DBP) (Choi *et al.*, 2002; Choi and Valentine, 2002a and 2002b; Mitch and Sedlak, 2002).

No nationwide data are available on nitrosamine occurrence in United States waters. However, other studies give an indication of likely occurrence. Since 1998, a number of NDMA detections have been reported in California ground water (CAEPA, 2002) and finished drinking water (CADHS, 2002) above the State's action level of 0.01 µg/L. The American Water Works Association Research Foundation recently collaborated with the Water Environment Research Foundation to fund a study on NDMA occurrence and behavior in raw, treated, and recycled water; however, the final report is not yet available.

Given evidence of the toxic nature of nitrosamines, and their potential occurrence in the environment (particularly NDMA in drinking water as a DBP), EPA proposes to include these six contaminants on the UCMR 2 list to learn more about their occurrence in drinking water.

ii. Others Identified in CCL 1 Process and Recent Reviews of Information on Emerging Contaminants—List 1.

The following additional contaminants are proposed for UCMR 2, List 1, Assessment Monitoring based on evaluation of CCL 1 lists and methods research.

• Dimethoate
• Terbufos sulfone
• Five flame retardants

Four polybrominated diphenyl ethers:
2,2′,4,4′-tetrabromodiphenyl ether (BDE–47)
2,2′,4,4′,5-pentabromodiphenyl ether (BDE–99)
2,2′,4,4′,5,5′-hexabromodiphenyl ether (BDE–153)
2,2′,4,4′,6-pentabromodiphenyl ether (BDE–100)

One polybrominated biphenyl:
2,2′,4,4′,5,5′-hexabromobiphenyl (245-HBB)

There are a variety of reasons these contaminants are being proposed for monitoring under UCMR 2. Terbufos sulfone was identified through the CCL 1 development process as a deferred pesticide. Dimethoate and the flame retardants are other contaminants that can be measured by the same analytical method that is proposed for terbufos sulfone. Terbufos sulfone and dimethoate have both been assigned ''high'' relative health effects rankings. Flame retardants are being proposed by EPA for UCMR monitoring because of recent concern that these have become widely occurring environmental contaminants (Darnerud *et al.*, 2001).

Although little is known regarding the health effects of terbufos sulfone, EPA has established an RfD of 0.00005 mg/kg/day for the parent compound, terbufos, based on a no observable adverse effect level for plasma cholinesterase inhibition (USEPA, 1999b). Terbufos was monitored under UCMR 1. Similar to the acetanilide degradates, however, EPA is concerned that terbufos sulfone will be found more commonly in the environment than its parent compound, based on the rapid decomposition of the parent compound. Such rapid decomposition combined with concern regarding the health effects of the parent compound terbufos justify determining the occurrence of terbufos sulfone in drinking water.

The method EPA proposes for the analysis of terbufos sulfone can measure many other contaminants (over 40). However, EPA used relative health effects information to identify the highest priorities and to comply with the statutory limit of 30 contaminants per UCMR monitoring cycle. Of the remaining compounds that could be measured using gas chromatography/mass spectrometry (GC/MS), the technology used in Method 527, dimethoate is being proposed for UCMR 2 monitoring because it received a ''high'' ranking in EPA's health effects screening (USEPA, 2004h). Dimethoate is a TRI chemical that is produced for use on cotton and other field crops, orchard crops, vegetable crops, in forestry, and residential uses (USEPA, 1999f).

Dimethoate is rapidly absorbed, metabolized, and eliminated in rats by oral or intravenous routes of administration (USEPA, 1999d). This compound is a cholinesterase inhibitor and exerts its major toxic effects through overstimulation of the nervous system (USEPA, 2003a). Health effects include headache, weakness, coma, and death from respiratory failure (HSDB, 1986). Dimethoate has been classified as a ''possible human carcinogen'' and EPA has established an RfD for this compound of 0.0002 mg/kg/day (USEPA, 2003d). No national data is available on the occurrence of dimethoate in waters of the United States; however, two local studies provide an indication of limited occurrence (USEPA, 1999f).

Synthetic flame retardants are among the other contaminants that are measured by EPA Method 527. Flame retardants, such as polybrominated diphenyl ethers (PBDEs) and polybrominated biphenyls (PBBs), are added to plastics used in a variety of consumer products such as computer monitors, televisions, textiles, and plastic foams. Production of PBBs ended in 1976 in the United States following an incident of significant agricultural contamination in 1973, but PBDEs are still produced and used in the United States. Flame retardants have been measured at low levels in air, sediments, animals, and food and are believed to be widely occurring in the environment (Darnerud *et al.*, 2001). Recent data also indicate that total levels of flame retardants are rapidly

[2] The Toxics Release Inventory (TRI) is a publicly available EPA database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups as well as Federal facilities. This inventory was established under the Emergency Planning and Community Right-to-Know Act of 1986 and expanded by the Pollution Prevention Act of 1990. Generally, reporting is required for facilities in covered industries with more than 10 full-time employees that annually manufacture or process more than 25,000 pounds, or use more than 10,000 pounds of a toxic chemical. More information is available at the TRI Program Web site at: *http://www.epa.gov/tri.*

increasing and that most people are exposed to low levels of these contaminants (Hites, 2004). Findings from animal studies suggest thyroid and liver effects, as well as possible reduced immune system function and neurobehavioral alteration (ATSDR, 2002).

3. Other Considerations in Selecting Contaminants

EPA has identified nine analytical methods and 26 priority contaminants for UCMR 2 monitoring. EPA considered many more contaminants and methods for UCMR 2. Some of these contaminants were given strong consideration but were not included as part of the proposed UCMR 2, as discussed in the following section.

a. Triazine Chlorodegradates and Parent Compounds. While they are not part of today's proposal, EPA invites comments on the possibility of UCMR 2 monitoring for three triazine chlorodegradates and three of their parent compounds, as follows:

- Desethylatrazine (DEA)
- Desisopropylatrazine (DIA)
- Diaminochlorotriazine (DACT) [3]
- Atrazine
- Simazine
- Propazine

EPA is interested in these chlorodegradates and three parent compounds because the Agency is conducting a cumulative risk assessment for the chlorodegradates as a group with atrazine, simazine and propazine. The ''triazines and degradation products of triazines'' are also CCL 1 contaminants.

Atrazine and simazine are regulated contaminants with MCLs of 3 µg/L and 4 µg/L, respectively. Propazine was a cancelled pesticide based on its contamination of ground water but was reintroduced for greenhouse uses only (it is now used on container grown ornamentals in greenhouses); however, EPA is currently evaluating a proposal to use propazine for the control of broadleaf weeds and annual grasses in sorghum, a use previously listed on labels, but voluntarily removed prior to 1990. Propazine was identified through the CCL 1 development process as a deferred pesticide. A fourth triazine, cyanazine, is not being addressed since its production and use were phased out between 1996 and 2002.

Atrazine, simazine and propazine metabolize into various chlorodegradation products of which Desethylatrazine (DEA), Desisopropylatrazine (DIA), and Diaminochlorotriazine (DACT) are the most significant. Atrazine forms all three of these chlorodegradates; whereas, simazine, a diethyl analogue of atrazine, degrades to DIA and DACT, and propazine, a diisopropyl analogue of atrazine, degrades to DACT and DEA (Scribner *et al.*, 2000). In addition, ambient water monitoring data indicate that concentrations of these chlorodegradates in water may be equal to, or even exceed, concentrations of atrazine (and other parent compounds) (Scribner *et al.*, 2000). While atrazine and simazine are already regulated under the National Primary Drinking Water Standards, EPA is considering UCMR monitoring for these parent compounds concurrent with the collection of UCMR data for their degradation products to determine the degree of correlation between the occurrence of the parents and their degradation products.

EPA is currently developing a liquid chromatography/tandem mass spectrometry (LC/MS/MS) method to analyze the parent triazines and these chlorodegradates and expects that method to be available within the next year. Depending on method development progress, EPA's further assessment of the relative health effects of triazine degradates, and comments received pursuant to today's proposed regulation, EPA may consider adding triazines and degradates to the Screening Survey for UCMR 2. Because only 30 analytes can be monitored during any one cycle of the UCMR program, EPA recognizes that the addition of the triazines and degradates to the Screening Survey may require the elimination of other contaminants from UCMR 2. Contaminants that EPA is considering in this regard may include one or more of the acetanilide pesticides or degradation products (see section III.A.2.b.i), which are also measured using an LC/MS/MS method. EPA invites comments on whether the concurrent use of two similar methods may strain laboratory capacity.

b. Other Contaminants Considered. EPA had originally identified over 200 contaminants as potential UCMR 2 priorities. Many were eliminated based on specific criteria, as discussed in section III.A.2 of this action (including the requirements that pesticides must be registered, reference standards must be available, and the analytical method must be available to include in this proposed action). Those eliminated or deferred due to other considerations are worthy of further mention because of particular public interest. These contaminants, and the reasons for their exclusion from today's proposed action, include:

- *Aeromonas:* The UCMR 1 Screening Survey for Aeromonas indicates that it warrants further evaluation. Data analyzed thus far have identified Aeromonas at the genus level. Identification and analysis of pathogenic strains for some of the small system samples is underway but have not been completed as of the publication of this proposed action. EPA believes that it is premature to propose additional monitoring for Aeromonas. The evaluation of the speciation of the isolates collected during UCMR 1, and the development of a more routine and affordable species-specific method will support future monitoring, if deemed appropriate.
- *Cyanotoxins:* While extensive analytical methods development was conducted for one class of cyanobacteria toxins, microcystins, in preparation for UCMR 2, adequate accuracy in surface waters with total organic carbon levels of 2 mg/L and higher has not yet been demonstrated. Two other cyanotoxins—anatoxin A, and cylindrospermopsin—were included in the initial method development. However, these were not compatible with the microcystin method being developed, and other analytical methods will not be available in time for UCMR 2 monitoring. Therefore, none of the cyanobacteria toxins are being proposed for monitoring at this time. However, further analytical methods development is continuing.
- *Diuron:* EPA considered whether Diuron would be a good candidate to include in UCMR 2 Assessment Monitoring. Interim monitoring results from the UCMR 1 Screening Survey have shown only one detection of Diuron. Because this suggests very low occurrence in drinking water, and because other contaminants are of greater relative health effects concern, Diuron was not established as a priority contaminant for UCMR 2 monitoring.
- *Ethylene thiourea:* While extensive analytical methods development was conducted for ethylene thiourea in preparation for UCMR 2, reproducible recoveries have not yet been demonstrated. Therefore, ethylene thiourea is not being proposed for monitoring at this time. However, further analytical methods development is continuing.
- *Mirex and TBBPA:* Mirex was considered for UCMR 2 monitoring and was found to have a ''high'' relative health effects ranking. Though it can be measured using the GC/MS method, Mirex has not been used or produced in the United States since 1978. For this

[3] Another commonly used name for DACT is desthyldesisopropylatrazine.

reason, EPA has not included Mirex on the list of UCMR 2 priorities. In addition, tetrabromobisphenol A (TBBPA), a brominated flame retardant, was initially considered for inclusion on the list of contaminants to be measured using GC/MS, EPA Method 527. However, TBBPA was found to be incompatible with this method, and is therefore not included on the list of UCMR 2 priorities.

B. What Analytical Methods Will Be Used for Monitoring?

The analytical methods that are being proposed for use in UCMR 2 and the contaminants that they measure are listed in Exhibit 6. EPA has conducted both literature searches, as well as searches of available consensus method organizations' publications for additional analytical methods that could be used to support this monitoring. No such additional methods were identified that meet the requirements of this proposed action. All of the analytical methods proposed use either mass spectrometry or tandem mass spectrometry (*i.e.*, MS/MS) for the detection of the analytes, with the exception of EPA Methods 314.0 enhanced and 314.1 (USEPA, 1999e and USEPA, 2004b, respectively).

EPA is proposing that all positive occurrences of perchlorate (*i.e.*, those at or above the MRL of 0.57 μg/L), determined using the Methods 314.0 enhanced or 314.1, must be confirmed through the use of a second chromatographic column, as detailed in Method 314.1, or by MS or MS/MS, using EPA Methods 331.0 or 332.0 (USEPA, 2004c and USEPA, 2004d, respectively). EPA requests comment on the level at which positive occurrences of perchlorate must be confirmed.

By design of the UCMR program, UCMR contaminants measured by analytical techniques that are commonly available are assigned to List 1, Assessment Monitoring (EPA Methods 314.0 enhanced, 314.1, 331.0, 332.0, 527, and 529). While most of these are newly developed analytical methods, the techniques they employ are in common use by drinking water laboratories. These methods are assigned to Assessment Monitoring because this is the largest component of UCMR, with monitoring conducted by a sample of 800 systems serving 10,000 or fewer people, and all systems serving more than 10,000 people (approximately 3,200 systems).

UCMR contaminants that are measured by analytical methods that have been recently developed and use techniques that are not commonly used in drinking water analyses are assigned to the List 2, Screening Survey. These less common methods are generally more appropriate for the Screening Survey because fewer laboratories will be capable of conducting such analyses, and the smaller scale monitoring under the Screening Survey should reduce potential laboratory capacity issues. However, in order to monitor for the parent compounds of the acetanilide degradates, Method 525.2, which is commonly used for regulated monitoring, is also being included for List 2 monitoring. During the Screening Survey, a sample of 800 systems serving 100,000 or fewer people and all (approximately 320) systems serving more than 100,000 people would monitor. Exhibit 6, summarizes the UCMR 2 methods and associated contaminants.

EXHIBIT 6.—ANALYTICAL METHODS PROPOSED FOR UCMR 2 MONITORING

Analytical method [1]	Contaminant	UCMR 2 List
EPA Method 314.0 enhanced (IC/Conductivity) EPA Method 314.1 (IC/Conductivity) EPA Method 331.0 (LC/MS or LC/MS/MS) EPA Method 332.0 (IC/MS or IC/MS/MS)	Perchlorate	List 1, Assessment Monitoring: 1 contaminant.
EPA Method 527 (SPE/GC/MS)	2,2',4,4'-tetrabromodiphenyl ether (BDE–47) 2,2',4,4',5-pentabromodiphenyl ether (BDE–99). 2,2',4,4',5,5'- hexabromobiphenyl (245-HBB). ..... 2,2',4,4',5,5'-hexabromodiphenyl ether (BDE–153). 2,2',4,4',6-pentabromodiphenyl ether (BDE–100). Dimethoate. Terbufos sulfone.	List 1, Assessment Monitoring: 7 contaminants.
EPA Method 529 (SPE/GC/MS)	1,3-dinitrobenzene 2,4,6-trinitrotoluene (TNT) Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)	List 1, Assessment Monitoring: 3 contaminants.
EPA Method 521 (SPE/GC/CI/MS/MS)	N-nitroso-diethylamine (NDEA) N-nitroso-dimethylamine (NDMA) N-nitroso-di-n-butylamine (NDBA) N-nitroso-di-n-propylamine (NDPA). N-nitroso-methylethylamine (NMEA). N-nitroso-pyrrolidine (NPYR).	List 2, Screening Survey: 6 contaminants.
EPA Method 535 (SPE/HPLC/MS/MS)	Acetochlor ESA Acetochlor OA Alachlor ESA Alachlor OA. Metolachlor ESA. Metolachlor OA.	List 2, Screening Survey: 6 contaminants.
EPA Method 525.2 (SPE/GC/MS)	Acetochlor Alachlor Metolachlor	List 2, Screening Survey: 3 contaminants.

EXHIBIT 6.—ANALYTICAL METHODS PROPOSED FOR UCMR 2 MONITORING—Continued

Analytical method [1]	Contaminant	UCMR 2 List
Total of 26 UCMR 2 contaminants		

[1] EPA Method 314.0: Determination of Perchlorate in Drinking Water Using Ion Chromatography (USEPA, 1999e). Note: Since Method 314.0 was published in 1999 to support UCMR 1 monitoring at an MRL of 4.0 μg/L, new instrumentation has been made commercially available from Metrohm Peak that can, using this method, achieve the MRL of 0.57 μg/L as called for by this proposed regulation, while meeting all of the quality control criteria of the method. Because enhanced Method 314.0 permits flexibility in the eluent, chromatographic column, and suppressor that are used, this new instrumentation would be permitted within the scope of the original method. Therefore, enhanced Method 314.0 is being proposed for use in this regulation.

EPA Method 314.1: Determination of Perchlorate in Drinking Water Using Inline Column Concentration/Matrix Elimination Ion Chromatography with Suppressed Conductivity Detection (USEPA, 2004b).

EPA Method 331.0: Determination of Perchlorate in Drinking Water by Liquid Chromatography Electrospray Ionization Mass Spectrometry (USEPA, 2004c)

EPA Method 332.0: Determination of Perchlorate in Drinking Water Using Ion Chromatography with Suppressed Conductivity and Electrospray Ionization Mass Spectrometry (USEPA, 2004d).

EPA Method 521: Determination of Nitrosamines in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography with Large Volume Injection and Chemical Ionization Tandem Mass Spectrometry (MS/MS) (USEPA, 2004e).

EPA Method 525.2: Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (USEPA, 1995).

EPA Method 527: Determination of Selected Pesticides and Flame Retardants in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS) (USEPA, 2004f).

EPA Method 529: Determination of Explosives and Related Compounds in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS) (USEPA, 2003c).

EPA Method 535, Revision 1.1: Measurement of Chloroacetanilide and Other Acetamide Herbicide Degradates in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS) (USEPA, 2004g).

C. How Were These Analytical Methods Developed?

EPA developed the proposed analytical methods at two laboratories in Cincinnati, Ohio: The Office of Water, Office of Ground Water and Drinking Water's Technical Support Center and the Office of Research and Development, National Exposure Research Laboratory's Chemical Exposure Research Branch. Additional methods development support was provided by: The Dionex Corporation, Sunnyvale, California; Metrohm Peak, Houston, Texas; Office of Research and Development's Ground Water and Ecosystems Restoration Division, Ada, Oklahoma; and EPA's Region 1, New England Laboratory, Chelmsford, Massachusetts.

Extensive method testing was performed for each of the analytical methods developed for this proposed action. Each step of each method was tested for robustness and to evaluate the amount of user flexibility that could be permitted for that step. Additional details concerning this testing, beyond that included in each method, are contained in methods research reports. These reports are available for each newly developed method being proposed in the docket for this action. However, no such report is available for Method 314.0, which was developed for UCMR 1, or for Method 525.2, which was developed in 1995. Wherever feasible, EPA permitted the maximum user flexibility commensurate with maintaining data quality. In addition, each method was tested in a second or, for some methods, a third laboratory. These second and third laboratory studies were designed to test the precision and accuracy of each method in reagent water and in different drinking water matrices, as well as the ease of use of the method and the clarity of the written instructions of the method. Reports containing the data developed during these second and third laboratory studies are also available in reports included in the docket for this action for each newly developed method being proposed. Similar data was generated in to support the proposed action of Method 314.0. These data are also included in the docket for review.

The methods developed for UCMR 2 analyses were peer reviewed in accordance with the Agency's peer review guidelines detailed in the ''Science Policy Council Handbook, Peer Review'' (USEPA, 2000b). Methods 314.0 and 525.2, which were developed prior to 2000, were peer reviewed using similar criteria.

D. How Were Minimum Reporting Levels Determined?

Minimum Reporting Levels (MRLs) represent an estimate of the lowest concentration of a compound that can be quantitatively measured by a group of experienced drinking water laboratories. EPA is proposing that all laboratories providing UCMR 2 analysis be required to demonstrate their ability to measure each compound at the MRL proposed for that compound in § 141.40(a)(3) of today's action. EPA has developed a protocol for developing MRLs based on Lowest Concentration MRLs (LCMRLs) that were determined by each laboratory that developed or subsequently tested the methods listed in today's action. LCMRLs represent the lowest concentration of a compound that can be quantitatively determined in each individual laboratory. EPA invites comments on the LCMRL/MRL approach and notes that in a related action, EPA's Office of Water is about to begin an evaluation of a wide range of detection and quantitation approaches under the Federal Advisory Committee Act (FACA) process. EPA expects to consider the comments and feedback from this FACA process to the extent possible in the development of the UCMR 2 final rule.

MRLs have previously been determined by analytical laboratories using expert professional judgement, but standard criteria for MRL determination have not been established. In both the Information Collection Rule (61 FR 24354, May 14, 1996 (USEPA, 1996b)) and UCMR 1, EPA specified MRLs and a requirement for recovery at the MRL so that data quality was documented daily. In the interest of greater consistency, EPA has developed a statistical protocol for single-laboratory determinations of LCMRLs using linear regression and prediction intervals. This approach, described in detail in the report titled ''Statistical Protocol for the Determination of the Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and Validation of the Minimum Reporting Level (MRL)'' (USEPA, 2004j), has been evaluated through expert peer review conducted in accordance with the Agency's formal peer review process and through the performance of a pilot-scale interlaboratory study. The

proposed protocol is available to the public, and can be found at: *http://www.epa.gov/safewater/methods/sourcalt.html*.

Details of this pilot-scale interlaboratory study are contained in a report titled ''Evaluation of the Lowest Concentration Minimum Reporting Level (LCMRL) and the Minimum Reporting Level (MRL) Primary Analyte Analysis'' (USEPA, 2004i). An evaluation of the procedures used in this proposed action, and other tested procedures to determine MRLs from LCMRLs, are detailed in Chapter 4 of the report. The guidelines and procedures for using LCMRLs in establishing MRLs for UCMR 2 are described later in this section.

As proposed, the MRL would be the lowest analyte concentration that meets Data Quality Objectives (DQOs) as presented in § 141.40(a)(5) of today's proposed rule, and represents the lowest concentration for which future recovery is predicted to fall, with high confidence (99 percent), between 50 percent and 150 percent. MRLs would be applicable to all laboratories that perform the analysis of drinking water samples as part of UCMR 2. All UCMR 2 laboratories would be required to validate their performance at or below the MRLs before initiating any analyses. This proposal does not require that measurements observed at concentrations below the MRL be reported. In other programs, such reporting may be appropriate. The appropriateness of reporting measurements below the MRL, is generally dependent upon the objectives of a study and is not addressed in this proposed action.

To determine the MRLs listed in today's action, each laboratory that conducted the primary analytical method development, or second or third laboratory studies, determined LCMRLs as detailed in the statistical protocol (USEPA, 2004g). The mean of these LCMRL values was calculated for each analyte. In cases where data from three or more laboratories were available, three times the standard deviation of the LCMRLs was added to the mean of the LCMRLs, to establish the MRL. In cases where data from two laboratories were available, three times the difference of the LCMRLs was added to the mean of the LCMRLs. In statistical theory (Chebyshev's Inequality), three standard deviations around the mean incorporates the vast majority (at least 88.9 percent) of the data points. In the case where there are only two laboratories, the difference serves as a surrogate for the standard deviation due to the uncertainty in the estimate of the standard deviation with only two data points. The MRL for each analyte was determined by then rounding this number to two significant digits.

Note that Method 525.2 was published before the LCMRL protocol was developed. Therefore, no LCMRL data are available for the analytes being determined using this method. The MRLs for acetochlor, alachlor, and metolachlor were determined using the same procedure used in UCMR 1, *i.e.*, multiplication of the highest individual laboratory method detection limit in the method by a factor of 10. Note also that there is a single MRL for perchlorate, although there are four methods approved for UCMR analyses. The value of 0.57 µg/L is a mid-range value (and the MRL determined for Method 332.0) that is easily achievable for Methods 314.1, 331.0, and 332.0; and slightly more difficult to achieve using Method 314.0.

LCMRLs were calculated by selected laboratories during analytical method development. There is no requirement for laboratories that are analyzing samples under the UCMR to determine LCMRLs. The procedure for LCMRL determination includes the following:

- Calibration curve analysis;
- Replicate sample analysis requirements;
- Linear regression procedures; and
- Outlier evaluation.

The validation of laboratory performance at or below the MRL would be required to be performed by all laboratories that analyze samples under UCMR 2. Validation would consist of two procedures:

- As part of the Initial Demonstration of Capability (IDC) for each analytical method, each laboratory would need to process seven replicate samples, spiked at or below the MRL, through the entire method procedure (*i.e.*, including extraction and with all preservatives, where applicable). This step would need to be performed for each analyte. Laboratories would be required to demonstrate that, based on the results of the seven replicates, their predicted range of results will fall, with 99 percent confidence, within 50 percent to 150 percent recovery, inclusive.
- During sample analysis, laboratories would need to run a daily check sample to demonstrate that, at or below the MRL for each analyte, the measured recovery is within 50 percent to 150 percent, inclusive. The results for any analyte for which 50 percent to 150 percent recovery cannot be demonstrated during the daily check would not be valid. Laboratories may elect to re-run the daily performance check sample if the performance for any analyte or analytes cannot be validated. If the performance for these analytes is validated, then the laboratory performance would be considered validated. If not, or as an alternative to analysis of a second check sample, the laboratory may re-calibrate and repeat the performance validation process for all analytes.

Further details regarding these procedures are available through EPA's UCMR Web site (*http://www.epa.gov/safewater/ucmr/ucmr2/index.html*) in a document titled ''UCMR 2 Laboratory Approval Requirements and Information Document'' (USEPA, 2004k).

E. How Will Laboratories Conduct UCMR Analyses?

All laboratories conducting analyses under this regulation must be approved by EPA to perform those analyses. Laboratories seeking approval must provide EPA with data that demonstrates their successful completion of an IDC as outlined in each method, verification of successful performance at the MRLs as specified in today's action, and successful participation in an EPA Proficiency Testing (PT) program for the analytes of interest. On-site audits of selected candidate laboratories may be conducted. Details of the EPA laboratory approval program are contained in the technical manual titled: ''UCMR 2 Laboratory Approval Requirements and Information Document'' (USEPA, 2004k). This document will be available on the electronic docket at: *http://www.epa.gov/edocket/*; or through EPA's UCMR Web site: *http://www.epa.gov/safewater/ucmr/ucmr2/index.html*. In addition, EPA may supply analytical reference standards for selected analytes to participating/approved laboratories.

1. Laboratory Approval Process for UCMR 2

The UCMR 2 laboratory approval program is designed to assess and confirm the capability of laboratories to perform analyses using the methods listed in Table 1 of today's proposed rule, in § 141.40(a)(3). With the exception of EPA Method 525.2, the UCMR 2 methods do not currently have an established certification program. Applicant laboratories that are already approved by their State or primacy entity to conduct drinking water analyses using Method 525.2 will still need to perform the UCMR approval steps, including the related PT evaluation. The UCMR 2 laboratory approval process is designed to assess whether laboratories meet the required equipment, laboratory performance, and

data reporting criteria described in today's action. This evaluation program is voluntary in that it only applies to laboratories intending to analyze UCMR 2 drinking water samples. However, EPA will require systems to use UCMR 2-approved laboratories when conducting monitoring for those analytes listed in Table 1 of § 141.40(a)(3) of this rule. A list of laboratories approved for UCMR 2 will be posted to EPA's UCMR Web site: *http://www.epa.gov/safewater/ucmr/ucmr2/labs.html*. Laboratories are encouraged to apply for UCMR 2 approvals as early as possible, as schedules for large PWS sampling will be completed soon after the final rule is promulgated. The steps for the laboratory approval process are as follows:

a. Request to Participate. The laboratory must contact EPA requesting to participate in the UCMR 2 laboratory approval process. Laboratories must send this request to: UCMR 2 Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or e-mail at: *UCMR_Sampling_Coordinator@epa.gov*. EPA will begin accepting requests for registration forms for the methods associated with the UCMR Contaminant List (including List 1, Assessment Monitoring, and List 2, Screening Survey) beginning August 22, 2005. The laboratory must request the necessary registration forms within 90 days after final rule publication.

b. Registration. EPA will send each laboratory that requests registration forms to conduct UCMR 2 analysis a list of information that EPA will need to process that application. This registration information will provide EPA with the basic information about the candidate laboratory: Laboratory name; mailing address; shipping address; contact name; phone number; fax number; e-mail address; and UCMR 2 methods for which the laboratory is seeking approval. Thus, the purpose of the registration step is to ensure that EPA has all of the necessary contact information, and that each laboratory receives a customized application package that will include materials and instructions for the methods that it plans to use.

c. Application Package. When EPA receives the registration information, an application package will be sent to the laboratory for completion. This application package will be customized to address only those EPA methods selected in the laboratory's registration information. EPA may provide analytical standards to be used when conducting monitoring; however, laboratories will be required to procure their own standards, where commercially available, to be used to complete the application process. Information requested in the application will include:

- IDC data, including precision, accuracy, and MRL studies;
- Information regarding analytical equipment;
- Proof of current drinking water laboratory certification; and
- Example chromatograms for each method under review.

The laboratory must also confirm that it will post UCMR 2 monitoring results (on behalf of its PWS clients) to EPA's UCMR electronic data reporting system.

d. EPA Review of Application Package. EPA will review the application package and, if necessary, request follow-up information. Satisfactory completion of this portion of the process will allow the laboratory to participate in the UCMR 2 PT program.

e. Proficiency Testing. A PT sample is a synthetic sample containing a concentration of an analyte that is known to EPA, but unknown to the laboratory being tested. To complete the initial laboratory approval process, a laboratory must successfully analyze UCMR 2 PT sample(s) for each method for which the laboratory is seeking approval. EPA intends to offer up to four opportunities for a laboratory to successfully analyze the UCMR 2 PT samples. Up to three of these studies will be conducted prior to the publication of the final rule, but at least one study will be conducted after publication of the final rule. When a laboratory passes a PT for one of the UCMR 2 methods, EPA will not send a PT sample for that method in later PT opportunities. Laboratories applying for UCMR 2 approval, and laboratories conducting UCMR 2 analyses, may be subject to on-site laboratory audits. No PT studies will be conducted after the start of monitoring. No laboratories will be approved that did not successfully complete a PT study.

f. Written EPA Approval. After the first five steps (a. through e.) have been successfully completed, EPA will send the laboratory a letter listing the methods for which approval is pending (if the PT study and laboratory evaluation is conducted prior to promulgation of the final rule) or approval is granted (after promulgation of the final rule). Laboratories receiving a pending approval may be automatically approved following promulgation of the final rule, or they may need to repeat all or part of the approval process, contingent upon what changes are applied to the rule between proposal of the draft rule and promulgation of the final rule. These letters will also include a reminder that the laboratory may be subject to on-site audits.

2. Quality Control Requirements

For UCMR 2, EPA has made several changes to the quality control requirements, which were previously located in § 141.40, Appendix A. The quality control steps in Appendix A information will be moved to § 141.40(a)(5). Requirements related to MRLs and to laboratory approvals will be incorporated into this section of the proposed rule, and are discussed in sections III.D and III.E.1, respectively. Changes related to the quality control requirements include:

- The language regarding Detection Limits will be replaced with the requirement to validate each laboratory's performance at or below the MRL. Since UCMR 1 was promulgated, EPA has developed new MRL and LCMRL procedures. The MRL procedures are now described in § 141.40(a)(5). Guidelines and procedures for using LCMRLs in establishing MRLs for UCMR 2 are described in this preamble, and in a document entitled: ''Statistical Protocol for the Determination of the Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and Validation of the Minimum Reporting Level (MRL)'' (USEPA, 2004j).
- The calibration step will be changed to remove the requirement for acceptance ranges for each analytical method. Because all of the methods approved for UCMR 2 monitoring specify calibration acceptance criteria, it is not necessary to specify criteria in this rule.
- The requirement to analyze a field reagent blank (Reagent Blank Analysis) will be removed because the analysis of a field reagent blank is not required in any of the methods proposed for UCMR 2. None of the analytes being proposed are sufficiently hydrophobic or volatile enough for there to be a serious concern about sample contamination during shipping.
- The requirement to analyze Quality Control Samples will be removed since they are not available for the majority of the analytes contained in this rule.
- The terms Matrix Spike and Matrix Spike Duplicate will be replaced with Laboratory Fortified Sample Matrix and Laboratory Fortified Sample Matrix Duplicate, respectively, to be consistent with the terms specified in the data

elements table in § 141.35(e) of today's proposed action.

- The language to describe Internal Standard Calibration will be modified to more clearly describe the requirements.
- The requirements regarding the Method Performance Test will not be changed.
- The requirements related to Detection Confirmation will be revised to be consistent with the methods being approved in this rule. Analytical results for perchlorate determined to be at or above the MRL using Methods 314.0 and 314.1 are required to be confirmed by a second chromatographic column, or by confirmation using Method 331.0 or 332.0, before being reported. Alternatively, the primary analysis of perchlorate may be conducted using either Method 331.0 or 332.0.
- Reporting requirements will be clarified and modified such that laboratories will be required to report their data to EPA's electronic data reporting system (*http://www.epa.gov/safewater/ucmr/ucmr2/reporting.html*) within 120 days of sample collection. PWSs have 60 days from the laboratory posting to review, approve, and submit the data to the State and EPA via the electronic reporting system. After 60 days from the laboratory's posting, if the PWS has not approved and submitted the data, the data will be considered approved and final for EPA review.

No changes will be made to the requirements related to Sample Collection and Preservation other than the addition of the requirement for laboratories using Method 314.0 for the analysis of perchlorate to preserve their samples as required in the other approved perchlorate analysis methods. In addition, the requirements concerning Method Defined Quality Control will not be changed.

F. How Are Systems Selected for UCMR Monitoring?

1. How Are Systems Selected for Assessment Monitoring?

a. Original Assessment Monitoring Statistical Approach for UCMR 1. Under UCMR 1, Assessment Monitoring was specified to be conducted by all large CWSs and NTNCWSs serving more than 10,000 people (*e.g.*, a census of large systems, totaling approximately 3,100), and by a statistically representative sample of 800 small systems (systems serving 10,000 or fewer people). The large size of the stratified random sample allowed for a high level of confidence in the resulting monitoring data and low error or uncertainty within the sample. The List 1 contaminants monitored under Assessment Monitoring are the priority contaminants for which analytical methods have already been developed.

EPA identified DQOs for the representative sample of small systems to include the following: data must provide unbiased national exposure estimates; and margins of error must be kept to ±1 percent with 99 percent confidence for CWSs and ±2.5 percent with 95 percent confidence for NTNCWSs. Use of a standard statistical design formula to estimate the minimum sample size and an assumed estimated occurrence of approximately 1 percent resulted in a minimum sample size of 659 systems. The sample size was then adjusted upwards to account for additional DQOs. Furthermore, the sample was stratified across system size, water source, and type to account for differences in vulnerability, differential occurrence, and management capacity, as outlined below.

The small system representative sample was designed to account for different system sizes, types of systems, sources of water supply, contaminants likely to be found, and geographic location (*e.g.*, States), as outlined in SDWA section 1445(a)(2)(A). The sample was stratified considering the proportion of the population served by CWSs and NTNCWSs by water source type (*i.e.*, ground or surface water) and system size category (*i.e.*, serves 25 to 500 people, 501 to 3,300 people, and 3,301 to 10,000 people) within the water source type. This stratification allowed EPA to account for different exposure risks of contaminant occurrence that may be related to the differential vulnerability of water sources and differing management and financial capacity that can vary across system types and sizes.

EPA also allocated the selection of small systems across all the States and territories to account for differences in spatial vulnerability and contaminant occurrence and made adjustments to ensure equity in participation. Because contaminant exposure assessment was a primary goal of UCMR 1, EPA began with a base design that allocated systems to States in proportion to the population served. This population-weighted allocation leads to the best estimates of national exposure. However, this approach, when strictly applied, assigns small numbers of systems, or even zero systems, to the smallest States and territories. To ensure the sample was fully representative of the nation and to provide equity across States for involvement in the UCMR, EPA adjusted the population-based design to include at least two systems from each State and territory in the United States (with the exception of Guam, which had only one PWS that qualified). Small Tribal water systems in each of the 10 EPA Regions were grouped into a single category for the representative sample. Thus, the Tribal category was equivalent to a ''State'' for the statistical selection process, which ensured that Tribal systems would be selected. Exhibit 7 summarizes the system allocation across system sizes and water sources, including the adjustment for a minimum of two systems per State.

EXHIBIT 7.—APPROXIMATE SAMPLE ALLOCATION FOR ASSESSMENT MONITORING: EXPECTED NUMBER OF SYSTEMS SELECTED BY SYSTEM SIZE AND WATER SOURCE [1]

Size category	Ground water systems	Surface water (and GWUDI) systems [2]	Total
500 and Under	103	57	160
501 to 3,300	250	50	300
3,301 to 10,000	230	110	340
Total	583	217	800

[1] For more information see ''Statistical Design and Sample Selection for UCMR 1'' (USEPA, 2001c).
[2] GWUDI = ground water under the influence of surface water.

To provide an improved understanding of contaminants and conditions affecting small systems in UCMR 1, EPA selected 30 small PWSs from the systems in State Monitoring Plans as ''Index Systems'' at which contaminants would be monitored every year during the five-year cycle. EPA conducted the sampling and testing for the Index Systems. At the time of sampling, EPA also gathered other data to characterize the environmental setting affecting the system including precipitation, land and water resource use, and environmental data (such as soil type and geology).

The details of the design are included in ''Statistical Design and Sample Selection for the UCMR 1'' (USEPA, 2001c). The design of UCMR 1 was subjected to peer review and improved by recommendations of the peer reviewers, as well as from suggestions made during the public comment and response process in developing UCMR 1.

b. *Proposed Assessment Monitoring Statistical Approach for UCMR 2.* EPA proposes to maintain the same basic statistical design for its UCMR 2 national representative sample of 800 small systems and to continue with a census of large water systems for Assessment Monitoring. EPA believes that the combination of a nationally representative sample of small systems and a census of large systems provides a powerful tool for assessing contaminant occurrence in PWSs, and believes that this is the most effective and accurate survey approach, as long as methods, laboratory capacity, and cost issues allow for its implementation.

EPA is proposing to eliminate Index System monitoring at small systems under UCMR 2 based on the lack of contaminant occurrence observed at Index Systems monitored in UCMR 1.

2. How Are Systems Selected for the Screening Survey?

a. *Original Screening Survey Statistical Approach for UCMR 1.* The Screening Survey tier of UCMR 1 was designed as a statistical sample to assess contaminant occurrence in PWSs. However, because of the small number of systems, the resulting data were only designed to be used for national estimates. Individual strata had too large a variance to provide meaningful estimates. The Screening Survey, List 2 contaminants were those for which uncommon analytical methods were used. To ensure there was enough laboratory capacity to conduct these new, specialized analyses, the Screening Survey sample size was limited to 300 systems (120 large and 180 small PWSs). Screening Survey results from UCMR 1 were generally expected to provide only enough information for EPA to determine whether a contaminant should be elevated to future Assessment Monitoring because at low occurrence there would be considerable uncertainty. Only at a relatively high level of occurrence could a contaminant be moved directly to regulatory determination using the UCMR 1 Screening Survey data.

The Screening Survey sample of systems was randomly selected from the Assessment Monitoring sample pool to allow systems some efficiency in conducting sampling for both tiers of monitoring. Screening Surveys and Assessment Monitoring were scheduled to coincide for those small system systems selected for both. By design, large Screening Survey systems were selected from the pool of all large systems, as all were required to conduct Assessment Monitoring. However, there were difficulties with the sample selection for small systems because the sample pool was small. During either of the two UCMR 1 Screening Survey years, the sample pool was restricted to one-third of the Assessment Monitoring systems (approximately 267). Thus, the Screening Survey sample of 180 small systems represented approximately 67 percent of the available sample pool in a given year.

In general, the smaller sample size of the Screening Surveys is associated with higher margins of error and lower confidence in estimating contaminant occurrence (compared to the larger Assessment Monitoring sample). Although the sample as a whole can provide nationally representative estimates, sample results cannot be subdivided to be representative of individual strata, as they can be with the larger Assessment Monitoring sample. In addition, uncertainty is high for low occurrence contaminants. The samples for each Screening Survey under UCMR 1 were allocated across five system size categories, as well as across ground water and surface water (and ground water under the direct influence of surface water (GWUDI)) systems, to provide coverage of differences in vulnerability that may exist. See Exhibit 8 for the sample allocation across system size and source water categories. Each size category was given equal importance with 60 systems selected from each size category, and with the selected systems distributed evenly between surface water and ground water systems wherever possible (*i.e.*, 30 ground water and 30 surface water systems were targeted to be selected to monitor for each Screening Survey). However, when there were not enough systems in a given size/source category, systems were allocated to the other source within that same size category. This was the case for small systems because of the restricted sample pool. This resulted in a uniform sample allocation across all size categories, with 180 small systems and 120 large systems in each of the two Screening Surveys. This distribution was used to provide a balance between population served and the number of systems. A sampling scheme weighted by population cannot include many small and very small systems; a scheme weighted by the number of systems served can include too many small systems at the expense of large systems (USEPA, 2001c).

EXHIBIT 8.—UCMR 1 DESIGN ALLOCATION OF SYSTEMS FOR SCREENING SURVEYS, BY SIZE CATEGORY

Size category	Ground water systems [1]	Surface water (and GWUDI) systems [2]	Total
Sample of Small Systems (serving 10,000 or fewer people)			
500 and Under	30	30	60
501 to 3,300	30	30	60
3,301 to 10,000	30	30	60
Subtotal Small Systems	90	90	180
Large Systems (serving more than 10,000 people)			
10,001 to 50,000	30	30	60
50,001 and over	30	30	60

EXHIBIT 8.—UCMR 1 DESIGN ALLOCATION OF SYSTEMS FOR SCREENING SURVEYS, BY SIZE CATEGORY—Continued

Size category	Ground water systems [1]	Surface water (and GWUDI) systems [2]	Total
Subtotal Large Systems	60	60	120
Total	150	150	300

[1] Includes systems with all of their water supplied by a ground water source.
[2] Includes systems with all or part of their source water supplied by surface water or GWUDI.

b. Proposed Screening Survey Statistical Approach for UCMR 2. To increase the statistical strength of the Screening Survey sample, EPA proposes to include additional PWSs in the Screening Survey under UCMR 2. The sample size will be increased in two ways to ensure the data can be used to support regulatory determinations and rule development, if warranted. Thus, if a contaminant of concern is found to occur with some significance during the Screening Survey, EPA may choose not to conduct Assessment Monitoring and move to make a regulatory determination based on these data to protect public health more quickly.

The proposed new Screening Survey design also accounts for possible laboratory capacity issues related to the use of uncommon methods. The Screening Survey will be conducted across two years, rather than the one-year implementation period that was established under UCMR 1. Spreading the monitoring across two years will reduce the burden on the limited number of laboratories that will be capable of using these uncommon methods. In today's proposed rule, only one Screening Survey list is included, as compared to UCMR 1, in which separate Screening Survey lists were issued for chemical and microbial monitoring. As shown in the UCMR 2 time line in section III.K, Exhibit 10, EPA has left open the possibility of a second Screening Survey later in the UCMR 2 monitoring cycle, if necessary.

The proposed design increases confidence in the sampling results in two ways. First, the Screening Survey would use a larger stratified random sample of approximately 800 systems (compared to 300 under UCMR 1), allocated across five strata for systems serving 100,000 or fewer people. The sample size is derived from the same rationale as that for Assessment Monitoring, but the sample frame is expanded to include large systems serving between 10,001 and 100,000 people. Second, the Screening Survey will include a census of the largest PWSs, those serving more than 100,000 people (322 systems), referred to within this section as ''very large'' systems. Using a census of these very large systems will minimize the possibility of missing contaminant occurrence at the systems that serve the largest portion of the population, while keeping the number of systems required to conduct the Screening Survey relatively small. No small systems (those serving 10,000 or fewer people) will be selected to participate in more than one component of UCMR 2 (*i.e.*, will monitor for only Assessment Monitoring or the Screening Survey).

The sample of 800 systems serving 100,000 or fewer people will be divided uniformly among 10 strata (as used in past Screening Surveys under UCMR 1; see Exhibit 8). With the census of the systems serving 100,001 people or more (approximately 322), plus the sample of 800 systems, 1,122 water systems will monitor for the Screening Survey under UCMR 2.

EXHIBIT 9.—ALLOCATION OF SYSTEMS FOR SCREENING SURVEY, LIST 2 CONTAMINANTS

Size category	Ground water systems [1]	Surface water	Total systems (including GWUDI) [2]
Sample of Small Systems (serving 10,000 or fewer people)			
50 and under	80	80	160
501 to 3,300	80	80	160
3,301 to 10,000	80	80	160
Subtotal Small Systems Sample	240	240	480
Sample of Large Systems (serving 10,001 to 100,000 people)			
10,001 to 50,000	80	80	160
50,001 to 100,000	80	80	160
Subtotal Large Systems Sample	160	160	320
Subtotal of Small and Large Systems Sample	400	400	800
Census of Very Large Systems (serving greater than 100,000 people)			
100,001 and over	61	261	322
Grand Total	461	661	1,122

[1] Includes systems with all of their water supplied by a ground water source.
[2] Includes systems with all or part of their source water supplied by surface water or GWUDI.

3. What Is UCMR Pre-Screen Testing?

The third tier of UCMR 1, Pre-Screen Testing, was envisioned for use with methods that were in the early stages of development, and/or methods that were very specialized or limited in applicability. It was to be conducted by up to 200 PWSs that would be identified by State agencies as vulnerable to the List 3 contaminants. This testing would be a targeted sampling to assess occurrence in the most vulnerable settings, and could help to guide the next steps for contaminant evaluation as well as methods development. Although no Pre-Screen Testing has been scheduled to date, nor has any been proposed in this action, the Pre-Screen Testing design could still be a useful way to monitor for emerging contaminants with highly technical, specialized methods. Therefore, the rule retains the language related to Pre-Screen Testing that was part of the original rule.

4. What Are the Other Applicability Considerations?

Applicability criteria for UCMR 2 remain similar to those under UCMR 1. The survey design for the Screening Survey is slightly different than that under UCMR 1, as described in section III.F.2. Specific UCMR 2 applicability criteria are described in §§ 141.40(a)(1) and (2) of today's proposed action. Notable changes or clarifications to the applicability criteria include the establishment of a clear date for rule applicability; a requirement to notify EPA in the case of changes to applicability; and clarification regarding the definition of system population, as follows:

a. *New Applicability Date.* The applicability requirements for PWSs under UCMR 1 provided distinct criteria (*e.g.*, system size, water source, etc.) which helped determine whether a system could be subject to UCMR monitoring requirements. However, a specific date was not prescribed in the UCMR 1 regulation to establish a cutoff date by which systems did or did not fit these criteria. This created uncertainty defining applicability over the course of the three-year monitoring period (2001–2003). EPA is proposing in § 141.40(a) to establish the UCMR 2 applicability criterion that includes a specific applicability date of June 30, 2005, at which point a defined list of PWSs will be established as subject to the rule requirements.

b. *Notice Regarding Changes to Applicability Required.* The proposed rule also includes an allowance for adjustments to a system's applicability status through reporting requirements in § 141.35(b)(2). During the course of UCMR 2 implementation, if a change occurs at a system that affects UCMR applicability or specific monitoring requirements (such as a change of source water, or closure of a sampling location), the system can send a letter to EPA explaining the changes and requesting appropriate changes to its monitoring requirements. However, to ensure that a system does not mistakenly discontinue monitoring, today's proposed action specifies that the system must continue to monitor according to established requirements until it receives written approval from EPA to change its requirements. EPA will address these requests on a case-by-case basis.

c. *Definition of System Population.* Under UCMR 1, large PWSs were defined as those systems that served a population of more than 10,000 individuals and small PWSs were those that served 10,000 or fewer people. While this included the sum of the population served by the combined distribution system this requirement was occasionally misunderstood. In today's proposed action EPA has explained more clearly that ''population served'' is the sum of the retail population served directly by the PWS plus the population served by any consecutive system(s) receiving all or part of its finished water from that PWS. As was established in the proposed Stage 2 Disinfectants and Disinfection Byproducts Rule (68 FR 49547, August 18, 2003 (USEPA, 2003b)) EPA defines a ''consecutive system'' as a public water system that buys or otherwise receives some or all of its finished water from one or more wholesale systems.

G. When Must Monitoring Be Conducted?

1. Timing of Monitoring

The timing of monitoring is a critical aspect of UCMR implementation. Similar to UCMR 1, the UCMR 2 program will have two components: Assessment Monitoring for List 1 contaminants, to be conducted July 2007–June 2010; and the Screening Survey for List 2 contaminants, to be conducted July 2007–June 2009.

For each component of UCMR 2, participating systems will collect samples as follows:

- Surface water sampling locations (including all sampling locations for which some or all of the water comes from a surface water or GWUDI source) will be sampled four times, three months apart, during a continuous 12-month period. These locations must be sampled in either the first, second, or third month of four consecutive quarters. Therefore, a system could conduct monitoring in either: (1) January, April, July, October; (2) February, May, August, November; or (3) March, June, September, December.
- Ground water sampling locations (including only those sampling locations at which all of the water comes from a ground water source) will be sampled two times, for six months apart, during a continuous 12-month period.

The specific days of the week for sample collection and shipping are limited to ensure sample quality. Under both UCMR 1 and today's proposed UCMR 2, systems cannot collect samples on Friday, Saturday, or Sunday. The reason stated within the UCMR 1 language was that samples needed to be shipped and received at the laboratory within 30 hours of sampling to accommodate requirements for the sampling of microbiological parameters, as well as to assure that the samples were received within the required temperature range. A 30-hour turn-around time is sometimes not possible to achieve and there are no microbiological parameters included in this action. Therefore today's action proposes to replace the 30-hour turn-around time with the requirement that samples be shipped and received at the laboratory at the required temperature to maintain sample quality.

2. Individual PWS Monitoring Schedules

Based on lessons learned during UCMR 1 implementation, EPA intends to establish schedules for large system monitoring to ensure adequate laboratory capacity for the analysis of UCMR contaminants, and to improve the oversight of monitoring and data reporting. Under UCMR 1, EPA specified the year and months in which small systems would monitor, for both Assessment Monitoring and the Screening Surveys, to ensure coverage related to spatial and temporal monitoring, and to enable scheduling of laboratory analyses and shipping of sampling materials (all of which EPA paid for). However, schedules for large systems only specified a particular year for Screening Surveys. For Assessment Monitoring, large systems could select their year and months of monitoring, within a three-year window. Large systems were not required to notify EPA of their Assessment Monitoring schedule, and many opted to conduct monitoring during the last possible year, which created some implementation problems. EPA was not able to project

the numbers of PWSs or identify the individual PWSs that had failed to comply with the UCMR 1 requirements until well into the final monitoring year, making compliance assistance more difficult. Greater scheduling flexibility was believed justified for UCMR 1 because the majority of the approved UCMR 1 analytical methods were also approved for established compliance monitoring. This flexibility allowed for possible cost savings on laboratory fees and sample collection burden. In contrast, UCMR 2 methods are not appropriate for compliance monitoring (with the exception of Method 525.2, which has been added to allow for the monitoring of both the acetanilide degradates, and the parent compounds).

EPA will use the State Monitoring Plans [4] to identify all small and large systems that will participate in the UCMR program, and to identify the monitoring schedule for each system. More specifically, EPA will send each State an initial State Monitoring Plan that lists all small and large systems that are subject to the UCMR requirements, and an initial schedule for sampling (year and months) for each system. In the initial State Monitoring Plans for each State, approximately one-third of the PWSs will be scheduled to conduct Assessment Monitoring in each continuous 12-month period during July 2007 through June 2010 and approximately one-half of the PWSs will be scheduled to conduct the Screening Survey in each continuous 12-month period during July 2007 through June 2009. States that enter into Partnership Agreements (PAs) with EPA will have the option to review and revise PWS monitoring schedules as part of their modifications to the State Monitoring Plans.

EPA will incorporate State revisions to the final State Monitoring Plans, including the sampling schedule revisions, if system participation is allocated approximately evenly across the years of monitoring. PWSs will be notified of their schedules by either EPA or the State, as determined through PAs (see section III.I of today's action for discussion of PAs). Large PWSs that meet the UCMR 2 applicability criteria will be required to conduct UCMR 2 Assessment Monitoring, regardless of whether they are notified of a sampling schedule by EPA or the State.

Large systems will have 210 days from the publication of the final rule to revise their schedule using the EPA electronic data reporting system. Following this 210-day period, if a large PWS cannot sample according to the required schedule (e.g., if a sampling location is closed for more than 15 days before and after the scheduled monitoring), the PWS must send a letter to EPA explaining the reason samples cannot be taken according to the assigned schedule, and requesting an alternative schedule, either: (1) To UCMR Sampling Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or (2) by e-mail at *UCMR_Sampling_Coordinator@epa.gov.*

H. Where Are Samples Collected?

For UCMR 2 monitoring, EPA proposes that all Assessment Monitoring sampling locations be entry points to the distribution system (EPTDSs). Under UCMR 1, ''raw source water'' sampling was allowed (if required by the State for compliance monitoring of regulated contaminants). However, if a system monitoring its source water detected any contaminants above the MRL concentration during UCMR 1 (and treatment was subsequently applied), the system was required to initiate monitoring at EPTDSs. EPA proposes to eliminate the option of source water monitoring under UCMR 2 (except for source water that leaves the EPTDS untreated) because:

- This created confusion and errant reporting for systems during UCMR 1; and
- The methods being proposed for UCMR 2 are generally not applicable to regulated contaminant monitoring, with the exception of Method 525.2; thus, UCMR 2 samples cannot be used to meet regulatory requirements, and no savings can be realized through use of multi-analyte methods that coincide with those for regulated contaminants.

EPA is proposing that the List 2 Screening Survey sampling locations be a combination of EPTDSs and distribution system sampling points. Monitoring for all the List 2 contaminants would be conducted at EPTDS sampling points. In addition to the EPTDS sampling location, monitoring for the nitrosamines would also be conducted at a sampling point location in the distribution system in order to capture the occurrence of NDMA as a disinfection byproduct (DBP). Both free chlorine and chloramines have been shown to form NDMA, but the rate of formation is slow, making it likely that NDMA concentrations will increase in the distribution system (Mitch and Sedlak, 2002). Thus, EPA is proposing that systems use their Stage 1 Disinfection Byproduct Rule (DBPR) maximum residence time sampling locations for the collection of distribution system samples for nitrosamine analyses. Systems with multiple treatment plants or sources of disinfected water will have a distribution system maximum residence time (DSMRT) sampling point associated with each plant/water source as defined in the Stage 1 DBPR (§ 141.132(b)(1)(i)). However, for some of the water systems that are required to conduct Screening Survey monitoring, the DSMRT sampling location may not be previously defined. Water systems that do not apply a chemical disinfectant, and wholesalers who do not have retail customers may not have defined DSMRT sampling points in the distribution system. For those cases, EPA is proposing that the nitrosamine samples be collected only at EPTDSs. EPA is requesting comment on whether or not nitrosamine samples should be collected at both the DSMRT sampling location and the EPTDS location or only at the DSMRT sampling location.

EPA is also proposing language to allow large systems that use ground water sources and have multiple EPTDSs to conduct monitoring at representative entry point(s) rather than at each EPTDS. Many systems with multiple ground water EPTDSs suggested to EPA during UCMR 1 that these wells are often representative of the same source of ground water (e.g., because they come from the same aquifer in the same well field). To monitor at representative EPTDSs, systems must meet the criteria specified in § 141.35(c)(3), and receive approval from EPA or the State (refer to section III.J.1 for a discussion of the criteria and necessary documentation).

I. What Is the States' Role in the UCMR Program?

Under UCMR 2, EPA is clarifying States' potential role in rule implementation. EPA will narrow the optional activities under Partnership Agreements (PAs), formerly referred to as ''Memoranda of Agreement,'' so that implementation responsibilities will be clearer. Under UCMR 1, EPA included regulatory language that described some implementation and oversight activities that States could agree to through the PA process. However, because the UCMR is a direct implementation rule, State participation is voluntary. Specific activities for individual States are

[4] Under UCMR 1, initial State Monitoring Plans included tabular listings of the small systems selected to conduct Assessment Monitoring and listings of all systems (small and large) selected to conduct Screening Survey monitoring. Initial State Monitoring Plans also included instructions to States for revising and/or correcting their State Monitoring Plans, including modifications to sampling schedules for small systems. EPA incorporated revisions from States and returned the final State Monitoring Plans to each State.

identified and established through the PAs, not through rule language. Thus to streamline the language for UCMR 2, EPA has deleted this non-rule language. EPA has retained the language related to the Governors' petition process (see § 141.40(b)(1)), and the State-wide waiver provision (see § 141.40(b)(2)).

One new responsibility under the PAs that States may choose to accept will be the review and approval of proposals for representative EPTDSs that are submitted by ground water systems. In addition, EPA will expand the State Monitoring Plans to include all PWSs that are subject to UCMR (as compared to UCMR 1 State Monitoring Plans, which included just those selected for the statistical samples). These changes are described further below.

1. State Participation in Partnership Agreements (PAs)

The statute provides a role for States in developing a representative monitoring plan for small systems (SDWA section 1445(a)(2)(C)(i)). In addition, States/Primacy agencies most often have the best information about PWSs in their State. Through PAs, States can help EPA implement the UCMR program and help ensure that the UCMR data used for future regulatory determinations will be of the highest quality possible. During UCMR 1 implementation, State assistance with implementation was critical to the success of the program and was greatly appreciated by the Agency. EPA would like to continue to build upon these partnerships by soliciting participation from the States through the PA vehicle for UCMR 2. However, under UCMR 2, EPA plans to simplify the PAs. The UCMR 1 PA was complex, with 43 assistance tasks that States could perform or defer to EPA to act on.

2. Activities To Be Included in the UCMR 2 PAs

The PA activity list under UCMR 2 is substantially shorter than that under UCMR 1 and will include a list of key activities for partnering States to perform, as discussed in this section. All States that agree to partner with EPA will be asked to review and provide any needed revisions to the State Monitoring Plan. Each State may agree to accept additional responsibilities as documented through each State's final PA with EPA. The primary potential State activities are discussed in sections a through c below. In addition, States that have assumed full partnership responsibilities may assist systems with their monitoring and reporting requirements, though the systems are ultimately responsible for compliance with their UCMR requirements.

a. *Review and Revision of the Initial State Monitoring Plan.* EPA will send each State an initial State Monitoring Plan that will identify the statistically selected systems for Assessment Monitoring and Screening Survey monitoring, and all other large systems that are subject to UCMR 2 requirements and applicability criteria (see discussion of UCMR 2 system selection in section III.F of today's action). For the statistically selected systems, EPA will provide a list of similar replacement systems from which States can select to replace systems that may not have been appropriately specified in the initial plan. If the State agrees to partner with EPA, the State will be asked to notify EPA that it either accepts the State Monitoring Plan as is, or provide a written request with proposed modifications to the plan. Specific timing of the State Monitoring Plan coordination will be addressed in the PAs. State modifications can include any or all of the following allowed changes:

- *Replace or update information on systems.* A State can modify its State Monitoring Plan by removing systems that have closed, merged, or are purchasing all of their water from another system. If a State believes there are other reasons for removal from the initial plan, it will be asked to identify those systems, and provide an explanation for removal, in the request to modify the initial plan. If a State believes there are large systems (those serving more than 10,000 people) within their State that have not been included on the list of Assessment Monitoring systems, the State will be asked to identify those systems, and provide an explanation for their inclusion in the request to modify the initial plan. Information about the actual or potential occurrence or non-occurrence of contaminants at a system, or a system's vulnerability to contamination cannot be used as a basis for removal from or addition to the plan. For the set of statistically selected systems, a State will be asked to replace any system it removes with systems from the replacement list, selecting replacements in the order they are listed.
- *Modify the timing of monitoring for systems.* A State may also modify the plan by recommending changes to the timing of monitoring for any system by selecting an alternative schedule (year and months) within the years specified for Assessment Monitoring or the Screening Survey. One reason a State may chose to modify the timing for system sampling could be to coordinate monitoring with regulated contaminant compliance monitoring. As long as system participation is allocated approximately evenly across the years of monitoring, the schedule can be modified for any system in the initial plan.

b. *Review and Approval of PWS Proposed Representative EPTDS.* As discussed in section III.H, some large systems that use ground water as a source and have multiple EPTDSs may propose monitoring at representative entry point(s) rather than at each EPTDS. Large PWSs that have State-approved alternate EPTDS sampling locations, as provided for under §§ 141.23(a)(1), 141.24(f)(1), and 141.24(h)(1), may submit a copy of documentation from their State that approves their alternative sampling plan for EPTDSs. PWSs that do not have an approved alternative EPTDS sampling plan may submit a proposal to sample at representative EPTDS(s) rather than at each individual EPTDS if: They use ground water as a source; all of their well sources have either the same treatment or no treatment; and they have an EPTDS for each well within a well field (resulting in multiple EPTDSs from the same source, such as an aquifer). The existing approval documentation from the State or the representative well proposal, as appropriate, must be submitted to the UCMR Sampling Coordinator within 120 days after publication of the final UCMR 2 regulation. EPA or the State will review the proposal, coordinate any necessary changes with the system, and approve the final list of EPTDSs where the system will be required to monitor. No plan will be final until the system receives written approval from EPA or the State.

c. *Notification and Instructions for Systems.* If a State agrees to notify their systems, then within 30 days of receiving their final State Monitoring Plan, the State will be asked to notify all systems in that final plan of their monitoring and reporting requirements under UCMR, including sampling schedules. In addition, for each small system in the plan (i.e., those serving 10,000 or fewer people), the State will be asked to provide instructions on location, frequency, timing of sampling, use of sampling equipment, and handling and shipment of samples based on these regulations. EPA will provide States with guidance and templates for these small system instructions. States that perform the sampling or change the arrangements for the monitoring at the small systems in the plan will be asked to address these alternative monitoring arrangements in their PAs.

As part of the agreement to conduct system notification, partnering States will be asked to provide an electronic listing of all PWSs that have been notified within 30 days of that notification. The list should be e-mailed

in flat file or standard spreadsheet format (such as Microsoft® Excel) to: *UCMR_Sampling_Coordinator@epa.gov,* and should include the PWS identification (PWSID) code and the date notification was sent to each system. A representative sample of the notice letter should also be included.

3. What If States Do Not Participate in a PA?

Although EPA encourages each State to participate in a PA, States can choose not to enter into this agreement with EPA. In this event, the initial State Monitoring Plan that EPA sends the State will become the final State Monitoring Plan for that State and EPA will manage all UCMR-related activities, coordinating directly with affected PWSs in that State.

J. What Are the Data Reporting Requirements?

Under the current unregulated contaminant monitoring program, reporting requirements exist at § 141.35. Today's proposed action modifies those requirements to make reported results most useful for sound scientific analyses of the occurrence of unregulated contaminants. The proposed UCMR program identifies 15 data elements in § 141.35(e), Table 1, that must be reported with unregulated contaminant sample test results. Large systems conducting Assessment Monitoring must include data elements 1 through 5, and 7 through 15 with each sample result. Large systems conducting Screening Survey must include elements 1 through 15 with each result. Small systems must record key data elements on each sample form and bottle. Small systems conducting Assessment Monitoring must include elements 1 through 5, and 7; and those conducting Screening Survey must include elements 1 through 7. With today's proposed changes to Table 1 in § 141.35(e), some of the reporting requirements will remain the same, a few are clarified, some have been removed, and three new additional data elements are being proposed. A minor change that has been applied to many of the data elements is a change in nomenclature from ''identification numbers'' to ''identification codes'' to allow for the instances when alphanumeric identifiers are necessary.

Other additions and clarifications to § 141.35 are proposed for reporting that is required prior to and during monitoring. The purpose of these changes is to establish clear, enforceable locations and time frames for each system's UCMR monitoring, and to ensure that other critical rule-related information is communicated to EPA, such as changes to a system's applicability under the rule.

Requirements in today's proposed action that are intended to ensure communication regarding rule applicability and compliance include reporting of changes in system status or other factors that affect a system's requirements under the rule (such as if a system believes it does not meet the applicability criteria for UCMR); reporting to EPA if a system believes it is subject to UCMR requirements, yet has not been notified by either EPA or the State regarding requirements; and reporting to EPA if a system cannot sample according to its assigned schedule (*e.g.*, budget constraints, unavailability of sampling location during scheduled month of monitoring).

Requirements and restrictions in today's proposed action related to reporting of monitoring data are as follows: Systems cannot report previously collected sampling data (because compliance with UCMR 2 requires the use of uncommon analytical methods, most of which have been developed specifically for UCMR 2 contaminants); and systems reporting more than one set of results for the same sampling location and event will have the highest of the reported values as the official result.

EPA is proposing through today's action that large systems report contact information, sampling location inventory information, and monitoring results to EPA's electronic data reporting system: *http://www.epa.gov/safewater/ucmr/ucmr2/reporting.html*. Today's proposed action also specifies that communications requiring written explanations or copies of documentation be sent either: (1) To UCMR Sampling Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or (2) by e-mail at *UCMR_Sampling_Coordinator@epa.gov*. This information may be entered by the PWS, their State, laboratory, or other representative of the PWS; however, the PWSs is ultimately responsible for compliance with this requirement.

1. What Information Is Required Prior To Monitoring?

a. *Contact Information.* As with UCMR 1, large systems are required to report contact information to EPA. Today's proposed action clarifies that this information must be sent within 90 days of final rule publication, and specifies that the information must be submitted to EPA's electronic data reporting system. Today's proposed action also specifies that for small systems, EPA will send a letter requesting specific contact information. Those small systems, or the partnered State, must fill in the required information and return it within 90 days of receiving the request.

b. *Sampling Location and Inventory Information.* EPA is proposing that large PWSs provide inventory information for each applicable sampling location. This information must be reported through EPA's electronic reporting system within 210 days of final rule publication. For each sampling location, or for each approved representative sampling location (see the following section, III.J.1.c for information about representative sampling locations), large PWSs must submit the following information: PWSID code; PWS facility identification code; sampling point identification code; sampling point type identification code; and sampling location water type.

In addition, large systems that are required to conduct Screening Survey monitoring must also report the disinfectant(s) used to maintain a residual in the distribution system for each distribution system sampling location (see section III.J.3.a for discussion of these reporting elements). All systems serving more than 10,000 people must ensure that the information concerning the disinfectants used, are submitted along with the sample results.

c. *Proposals for Ground Water Representative Sampling Locations.* Some large systems that use ground water as a source and have multiple EPTDSs may propose monitoring at representative entry point(s) rather than at each EPTDS. Large PWSs that have State-approved alternate EPTDS sampling locations, as provided for under §§ 141.23(a)(1), 141.24(f)(1), and 141.24(h)(1), may submit a copy of documentation from their State that approves their alternative sampling plan for EPTDSs. PWSs that do not have an approved alternative EPTDS sampling plan may submit a proposal to sample at representative EPTDS(s) rather than at each individual EPTDS if: They use ground water as a source; all of their well sources have either the same treatment or no treatment; and they have an EPTDS for each well within a well field (resulting in multiple EPTDSs from the same source, such as an aquifer). The existing approval documentation from the State or the representative well proposal, as appropriate, must be submitted to the UCMR Sampling Coordinator within 120 days after publication of the final UCMR 2 regulation. EPA or the State will review the proposal, coordinate any

necessary changes with the system, and approve the final list of EPTDSs where the system will be required to monitor. No plan will be final until the system receives written approval from EPA or the State.

The proposal must demonstrate that any EPTDS selected as representative of the ground water supplied from multiple wells is associated with an individual well that draws from the same aquifer as the multiple wells (*i.e.*, those being represented). For each representative sampling location in the proposal, systems must include the following information: PWSID, facility identification code, and sampling point identification code. In addition, the proposal must include supporting documentation, which can include system-maintained well logs or construction drawings indicating comparable depths (relative to elevation datum) of screened intervals and details of well casings and grouting; data demonstrating relative homogeneity of water quality constituents (*e.g.*, pH, dissolved oxygen, conductivity, iron, manganese) in samples drawn from each well; and data showing that the wells are located in a limited geographic area (*e.g.*, all wells within a 0.5 mile radius) and/or, if available, the hydrogeologic data indicating time of travel separating the representative well from each of the individual wells it represents (*e.g.*, all wells within a five-year time of travel delineation).

2. When Must Monitoring Results Be Reported?

a. *Large Systems.* Today's proposed action establishes the timing of large system review and approval of monitoring data, as follows: Systems must ensure that their laboratory posts the data in EPA's electronic data reporting system (*http://www.epa.gov/safewater/ucmr/ucmr2/reporting.html*) within 120 days from the sample collection date; systems then have 60 days from when the laboratory posts the data in EPA's electronic data reporting system to review, approve, and submit the data to the State and EPA via the EPA electronic reporting system; if systems do not take action on the data within 60 days of the laboratory's posting to the electronic reporting system, the data will be considered approved by the system, and available for EPA review, prior to public release.

b. *Small Systems.* Because EPA pays for and organizes the small system testing program, the review and approval step for small systems differs. Under today's proposed action, small systems would only be required to record system and sample location information on the sampling forms and bottles that are sent to them by the UCMR Sampling Coordinator. Procedures for submitting this information will be specified in the instructions sent to the system. Small systems will not be required to review monitoring results, although they will be given a 60-day opportunity to review such results prior to their results being posted to the publicly available Web site.

3. What Data Elements Are Required With the Monitoring Results?

a. *New Data Elements.* EPA is proposing to add three new data elements: Water Source Type, Disinfectant Type, and Sample Event Code. Each is discussed in more detail as follows:

• *Water Source Type:* A system's water source type dictates the monitoring frequency (*i.e.*, monitoring is conducted during four consecutive quarters for surface water/GWUDI sampling locations and twice during the monitoring year for ground water sampling locations). Reporting of this data element will help EPA ensure that systems are collecting samples at the required frequency. Systems are required to report either of the following codes for each sampling location:

—SW = surface water (to be reported if the sampling location is served all or in part by a surface water source);
—GW = ground water (to be reported if the sampling location is served entirely by a ground water source); and
—GU = GWUDI (to be reported for water facilities that are served all or in part by ground water under the direct influence of surface water).

• *Disinfectant Residual Type:* This data element will identify the type of disinfectant used to maintain a residual in the distribution system. The nitrosamine, NDMA (one of the Screening Survey contaminants), has been shown to form in chlorinated or chloraminated water as a DBP. Thus, EPA is interested in identifying the type of disinfectant used to maintain a disinfection residual in the distribution system, including whether a disinfectant residual is applied. Reporting of this data element only applies to those systems that are subject to Screening Survey monitoring. These systems will be required to verify that each of the disinfectant code(s) that indicate the type or types of treatment used to maintain a disinfectant residual in the distribution system be reported for each Screening Survey sampling location, as follows:

—CL = chlorine;
—CA = chloramine;
—OT = all other types of disinfectant (*e.g.*, chlorine dioxide); and
—ND = no disinfectant used.

• *Sample Event Code:* This code will provide EPA with a unique identifier to associate reported field sample analytical results with a sampling event and, thus, allow the Agency to track whether scheduled monitoring has been completed. Using this code, PWSs will be required to keep EPA informed of any problems with their monitoring schedule for any given sampling event. For example, if resampling was needed due to problems with laboratory analyses, the system must inform EPA of which scheduled sampling event was being fulfilled by the results of the (unscheduled) resampling by using the Sample Event Code.

b. *Unchanged Data Elements.* There will be no changes to the reporting requirements for the following data elements: Public Water System Identification (PWSID) code, Sample Collection Date, Analytical Method Code, and Analytical Results—Sign.

c. *Modified Data Elements.* The following data reporting elements have been modified.

• *Public Water System Facility Identification Code—Sampling Point Identification Code and Sampling Point Type Identification:* During UCMR 1, Public Water System Facility Identification Code—Sampling Point Identification Code, and Sampling Point Type Identification were all contained in the same data element. EPA is proposing to separate these into three individual data elements, and to clarify the meaning of each, with changes that include:

—for Public Water System Facility Identification Code, a shorter, clearer definition, with length of the code specified as five digits;
—for Sample Point Identification Code, a revised definition which specifies that the same identification code must be used consistently for all current and future unregulated contaminant monitoring to represent the UCMR sampling location; and
—for Sampling Point Type Identification Code, a limitation for UCMR 2 to ''EP'' for entry point to the distribution system and ''MR'' for Stage 1 DBPR maximum residence time in distribution system because sampling under UCMR 2 will be limited to those two sampling locations. Eliminating codes for other sampling point types is intended to reduce confusion.

• *Sample Identification Code:* The size of the Sample Identification Code

has been expanded to include an alphanumeric value of up to 30 characters (formerly capped at 15) assigned by the laboratory. The sample identification code will uniquely identify containers, or groups of containers, which hold the water samples collected at the same PWS/facility/sampling location during the same sample collection date. This proposed action clarifies that the sample identification code must be unique to the sampling event within a PWS for each laboratory. A laboratory may not use the same sample identification code for more than one sampling event.

• *Contaminant/Parameter:* Because there are no water quality parameters being monitored in this proposed regulation, the Contaminant/Parameter data element is being revised to remove ''Parameter'' from the data element name, and the definition is being revised to reflect this change.

• *Analytical Result—Value:* Because the requirement to report the MRL is being removed, the definition of Analytical Result—Value is being revised to remove the requirement to report the MRL when the analytical result is less than the MRL.

• *Sample Analysis Type:* Sample Analysis Type is proposed to be revised to better reflect the type of sample collected. Previously, this data element could have four values: RFS (raw field sample), RDS (raw duplicate sample), TFS (treated field sample), or TDS (treated duplicate sample). These values were reported by the laboratory, which proved to be problematic, since the laboratory did not possess enough knowledge about the PWS treatment system or the location from which the sample was taken to be able to properly assign the correct sample analysis type. EPA is proposing to change the reporting requirements such that laboratories will be able to better define the sample analysis type with the following:

—FS = Field Sample, collected to fulfill the UCMR monitoring requirements;

—LFSM = Laboratory Fortified Sample Matrix, UCMR field sample with a known amount of the contaminant of interest added, associated with precision and accuracy;

—LFSMD = Laboratory Fortified Sample Matrix Duplicate, duplicate of the laboratory fortified sample matrix; and

—CF = Concentration Fortified, the concentration of a known contaminant added to a field sample.

This change will allow EPA to collect quality control information at the FS level instead of a laboratory batch level, and will allow EPA to know which UCMR FS was fortified. One UCMR FS should be fortified in duplicate within each analytical batch containing a UCMR sample. EPA will calculate precision and accuracy of the aggregate UCMR 2 monitoring data using the individual quality control data reported by systems.

• *Laboratory Identification Code:* This data element was formerly part of the Sample Batch Identification Code. Since batch identification is being eliminated, Laboratory Identification Code is being kept as a stand-alone data element. The value will be an EPA-assigned laboratory identification code.

d. *Data Elements No Longer Reported.* EPA is proposing to no longer use the following eight data elements: Analytical Result—Unit of Measure; Minimum Reporting Level (MRL); MRL Unit of Measure; Sample Batch Identification Code; Analytical Precision; Analytical Accuracy; and Presence/Absence.

• *Analytical Result—Unit of Measure, Minimum Reporting Level (MRL), and MRL Unit of Measure:* Each of these data elements are predefined by today's proposed action. All laboratories analyzing UCMR samples will use the same MRL and unit of measure for UCMR analyses. EPA's electronic data reporting system will be populated with the correct values for MRL and unit of measure, so there is no need to report these data elements.

• *Sample Batch Identification Code, Analytical Precision, and Analytical Accuracy:* These data elements are related to laboratory quality control information and laboratory batches. To simplify reporting, EPA is removing requirements to report batches. With the removal of batches, the reporting of associated quality control data such as accuracy and precision will change. Accuracy and precision will be automatically calculated by the data system as follows:

—Precision: Analytical precision will be calculated from reported results for LFSM and LFSMD. Precision is the degree of agreement between two repeated measurements and is monitored through the use of duplicate fortified samples. For purposes of the UCMR, analytical precision is defined as the relative percent difference (RPD) between spiked duplicates analyzed in the same batch of samples as the analytical result. Precision is calculated as RPD between fortified matrix duplicates using:

$$RPD = [(X_1 - X_2) / \{(X_1 + X_2)/ 2\}] \times 100$$

Where:

X_1 is the measured concentration of the LFSM; and

X_2 is the measured concentration of the LFSMD.

—Accuracy: Analytical accuracy will be calculated from reported results for FS, LFSM, and CF. For purposes of the UCMR, analytical accuracy is defined as the percent recovery of the contaminant in the LFSM analyzed in the same analytical batch as the associated FS result and calculated using:

% recovery = [(concentration found in fortified sample − concentration found in sample)/ concentration fortified] × 100.

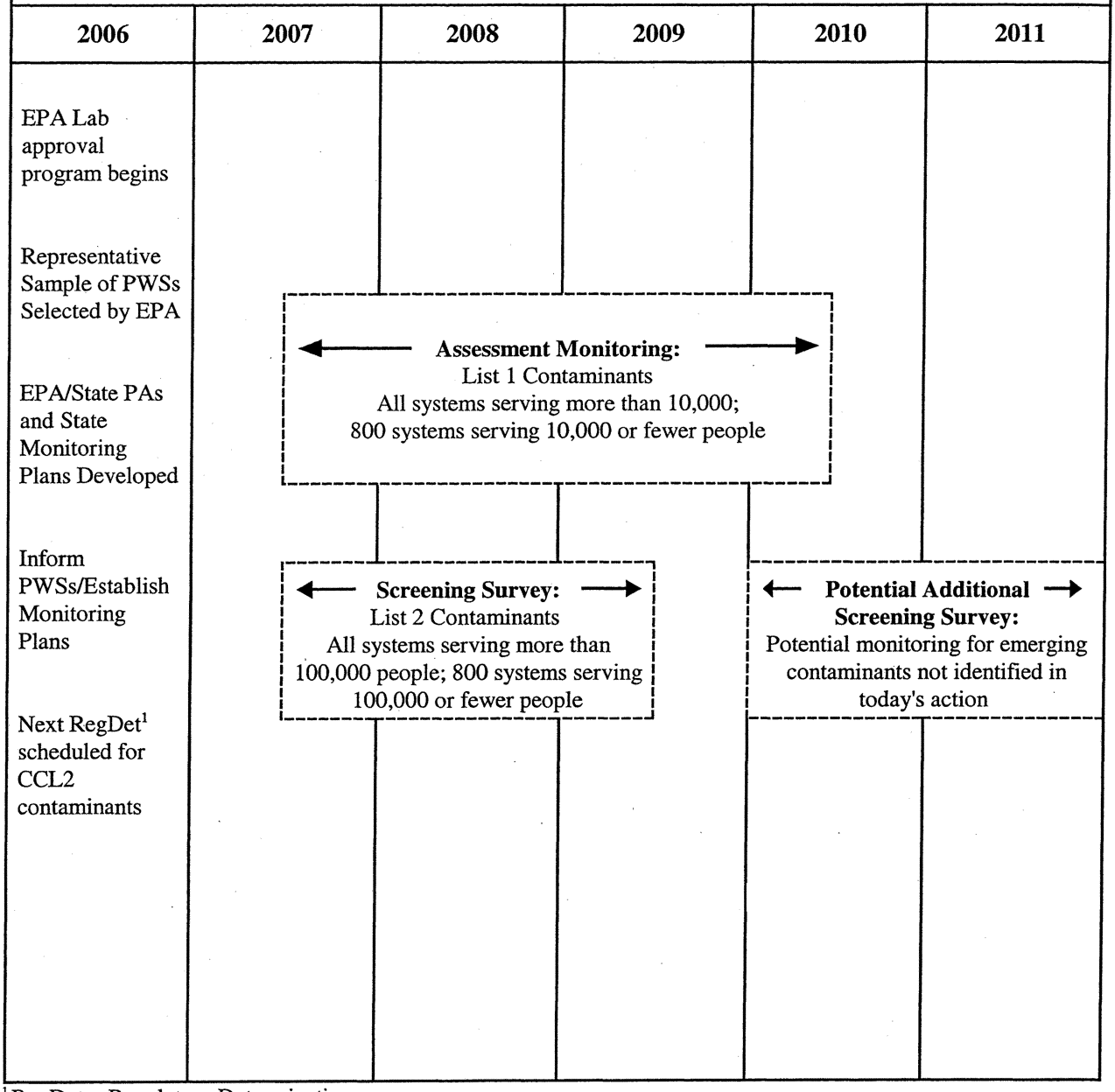
• *Presence/Absence:* This previously reserved data element was removed from the required list, as there are no analyses currently proposed on UCMR 2 that would require a presence/absence indicator.

K. Time Line of UCMR Activities

Monitoring under UCMR 2 is scheduled for July 2007 through June 2010. Preparation will begin prior to 2007 and will include coordination of laboratory approval, selection of representative samples of systems, development of State Monitoring Plans, and notification of participating PWSs. Assessment Monitoring for List 1 contaminants will be conducted from July 2007 through June 2010. The Screening Survey for List 2 contaminants will be conducted from July 2007 through June 2009. Exhibit 10 illustrates the major activities that will take place in preparation for and during implementation of UCMR 2.

BILLING CODE 6560–50–P

Exhibit 10: Time Line of UCMR Activities



[1] RegDet = Regulatory Determination

BILLING CODE 6560–50–C

To minimize the impact of the rule on small systems (those serving 10,000 or fewer people), EPA will pay for the sample kit preparation, sample shipping fees, and analysis costs for these systems. In addition, no small system will be required to monitor for more than one monitoring list of UCMR 2. Large systems (those serving more than 10,000 people) will pay for the cost of shipping and laboratory testing. Large systems will be responsible for reviewing, approving, and submitting (*i.e.*, ''reporting'') monitoring results to EPA. Large systems have 60 days from when the laboratory posts the data to then review, approve, and submit the data to the State and EPA, via EPA's electronic data reporting system. If they do not electronically approve the laboratory data within 60 days of the laboratory's posting to EPA's electronic reporting system, the data will be considered approved and final for EPA review. EPA and the State will conduct its quality control review of the data for 60 days after the system reports the data. This will also allow for quality control review by States. After the quality control review, EPA will place the data in the national NCOD at the time of the next database update.

1. Assessment Monitoring

Assessment Monitoring for List 1 contaminants will conducted from July 2007 through June 2010 by all large systems (those systems serving more than 10,000 people), and by a nationally representative sample of 800 small systems (those serving 10,000 people or fewer). Samples will be collected from EPTDSs. However, as clarified in today's proposed action, large ground water systems with multiple EPTDSs may be permitted to sample at representative sampling locations for each ground water source, as long as those sites have been approved by EPA or the State. Samples at ground water locations will be collected twice during a designated consecutive 12-month period. Samples at locations that are fed in whole or part by a surface water or GWUDI source will be collected quarterly during a designated consecutive 12-month period. Large system schedules (year and months of monitoring) will be determined by EPA in conjunction with the States (as described in section III.G.2 of today's action). The Agency will schedule and coordinate small system monitoring, working closely with partnering States. State Monitoring Plans will provide a venue for States to review and revise the initial sampling schedules that EPA proposes. The 11 proposed List 1 contaminants to be monitored under Assessment Monitoring are:

1,3-dinitrobenzene
2,2',4,4'-tetrabromodiphenyl ether (BDE–47)
2,2′,4,4′,5-pentabromodiphenyl ether (BDE–99)
2,2′,4,4′,5,5′-hexabromobiphenyl (245–HBB)
2,2′,4,4′,5,5′-hexabromodiphenyl ether (BDE–153)
2,2′,4,4′,6-pentabromodiphenyl ether (BDE–100)
2,4,6-trinitrotoluene (TNT)
Dimethoate
Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
Perchlorate
Terbufos sulfone

2. Screening Survey

Sampling under the Screening Survey for List 2 contaminants will be conducted from July 2007 through June 2009 by all PWSs serving more than 100,000 people, and by a stratified random sample of 800 PWSs serving 100,000 or fewer people. Samples collected at EPTDSs will be analyzed for the 15 contaminants listed below. Because the nitrosamine NDMA can be formed in chlorinated or chloraminated water as a DBP, the concentration may increase as the water travels through the distribution system (Mitch and Sedlak, 2002). Thus, EPA proposes an additional sampling location for the nitrosamines at the DSMRT sampling point defined under the Stage 1 DBPR for each treatment plant that is required to sample for DBPs. For plants that are not required to monitor for DBPs either because the water is not chemically disinfected or because the water is sold directly to another water system, the sampling location for the nitrosamines will be at the EPTDS; no DSMRT sample will be required. Samples at ground water locations will be collected twice during a designated consecutive 12-month period. Samples at locations that are fed in whole or part by a surface water or GWUDI source will be collected quarterly during a designated consecutive 12-month period. The 15 proposed List 2 contaminants to be monitored under the Screening Survey are:

Acetochlor
Acetochlor ESA
Acetochlor OA
Alachlor
Alachlor ESA
Alachlor OA
Metolachlor
Metolachlor ESA
Metolachlor OA
N-nitroso-diethylamine (NDEA)
N-nitroso-dimethylamine (NDMA)
N-nitroso-di-n-butylamine (NDBA)
N-nitroso-di-n-propylamine (NDPA)
N-nitroso-methylethylamine (NMEA)
N-nitroso-pyrrolidine (NPYR)

A summary of the estimated number of systems to monitor under each UCMR 2 component is listed in Exhibit 11.

EXHIBIT 11.— SYSTEMS TO PARTICIPATE IN UCMR 2 MONITORING

System size	Assessment monitoring	Screening survey	Pre-screen testing	Total [2]
	List 1 (July 2007–June 2010)	List 2 (July 2007–June 2009)	List 3 (TBD [1])	
Small Systems:				
25–10,000	800 selected systems	480 selected systems (different than those for List 1).	TBD	1,280
Large Systems:				
10,001–100,000	All (~2,788)	320 selected systems	TBD	~2,788
100,001 and over	All (~322)	All (~322)	TBD	~322
Total	~3,910	~1,122	TBD	~4,390

[1] TBD = To be determined

[2] Totals are not additive for large systems because all large systems conduct Assessment Monitoring, and a subset of these will also conduct Screening Survey monitoring.

IV. Cost and Benefits of Today's Proposed Action

In today's action, EPA proposes a new set of contaminants for monitoring in the second five-year UCMR monitoring cycle. In addition, UCMR 2 makes some modifications to the rule design. UCMR 2 Assessment Monitoring (for List 1 contaminants) will be conducted from July 2007 through June 2010 by 800 systems serving 10,000 or fewer, and by all systems serving more than 10,000 people. It is assumed for this cost estimation that one-third of systems will monitor during each of the three Assessment Monitoring years. The Screening Survey for List 2 contaminants will be conducted from July 2007 through June 2009 by 800 systems serving 100,000 or fewer, and all systems serving more than 100,000 (approximately 320 systems). Small systems (those serving 10,000 or fewer people) will not be subject to more than one component of UCMR 2 monitoring.

Labor costs pertain to systems, States, and EPA. They include activities such as reading the regulation, notifying systems selected to participate, sample collection, data review, reporting, and record keeping. Non-labor costs will be incurred primarily by EPA and by large PWSs. They include the cost of shipping samples to laboratories for testing and the cost of the actual laboratory analyses.

In today's action, EPA proposes nine analytical methods to monitor for 26 new UCMR contaminants (including four method options for perchlorate). Estimated system and EPA costs are based on the analytical costs for these methods. With the exception of Method 525.2, these methods are comparatively new and will not coincide with other compliance monitoring (e.g., no cost savings for coincident monitoring can be realized). Laboratory analysis and shipping of samples account for approximately 73 percent of the national cost for UCMR 2 implementation. These costs are calculated as follows: The number of systems, multiplied by the number of sampling locations, multiplied by the sampling frequency, multiplied by the cost of laboratory analysis. Under UCMR 2, surface water (and GWUDI) sampling points will be monitored four times during the applicable year of monitoring, and ground water sampling points will be monitored twice during the applicable year of monitoring. Screening Survey systems that are required to monitor for DBPs will be required to sample for nitrosamines at one distribution system sampling point per treatment plant (i.e., at the DSMRT), as well as their EPTDS sampling locations. EPA estimates of laboratory fees are based on consultations with national drinking water laboratories and the costs of analytical methods similar to those proposed in today's action, unit costs are as follows:

Assessment Monitoring (List 1):	
GC/MS (for 7 contaminants)	$225
Perchlorate (for 1 contaminant)	150
Explosives (for 3 contaminants)	225
Total	600
Screening Survey (List 2):	
Nitrosamines (for 6 contaminants)	300
Acetanilide degradates (for 6 contaminants)	350
Acetanilide parents (for 3 contaminants)	125
Total	775

Shipping is added to the calculated costs to derive the total direct analytical non-labor costs. Estimated shipping costs were based on the average cost of shipping of a 15-pound package.

Additional changes to the rule are expected to affect costs to small systems as compared to costs under UCMR 1.

- There will be no ''Index System'' component to the UCMR 2 program. Under UCMR 1, samples were taken from a group of 30 small Index Systems during all five years of the monitoring cycle to assess any trends in temporal occurrence, other data variability, or program problems. Based on its experience with UCMR 1, EPA is not proposing Index System monitoring for UCMR 2.
- Small systems will only be involved in one component of monitoring during the five-year cycle. Since there will be a greater number of systems involved in the program, less monitoring will be required of each participating system, thus reducing the average cost per small system.

In preparing the UCMR 2 information collection request (ICR), EPA relied on standard assumptions and data sources used in the preparation of other drinking water program ICRs. These include the PWS inventory, number of sampling points per system, and labor rates. EPA expects that States will incur only labor costs associated with UCMR 2 implementation. State costs were estimated using the relevant modules of the State Resource Model that was recently developed by the Association of State Drinking Water Administrators (ASDWA) in conjunction with EPA (ASDWA, 2003) to help States forecast resource needs. Model estimates were adjusted to account for actual levels of State participation under UCMR 1. Because State participation is determined through the PAs, level of effort will vary across States and depend on their individual agreements with EPA.

Over the UCMR implementation period of 2007–2011, EPA estimates that nationwide, the average annual cost of UCMR 2 is approximately $8.42 million. These total estimated annual costs (labor and non-labor) are incurred as follows:

Respondent	Average annual cost for all respondents (2007–2011) (millions)
Small Systems (25–10,000), including labor only (non-labor costs are paid for by EPA)	$0.05
Large Systems (10,001–100,000), including labor and non-labor costs	4.03
Very Large Systems (100,001 and greater), including labor and non-labor costs	1.53

Respondent	Average annual cost for all respondents (2007–2011) (millions)
States, including labor costs related to implementation coordination	0.49
EPA, including labor for implementation coordination and non-labor for small system testing	2.32
National total	8.42

Additional details regarding EPA's cost assumptions and estimates can be found in the ICR Number 2192.01 amendment prepared for this proposed rule which presents estimated cost and burden for the 2007–2009 period. Estimates of costs over the entire second five-year UCMR cycle of 2007–2011 are attached as an appendix to the ICR. Copies of the ICR and its amendment may be obtained from the EPA public docket for this proposed rule, which includes this ICR, under Docket ID Number OW–2004–0001.

V. Technical Corrections

When EPA published ''Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule,'' on September 17, 1999 (64 FR 50556, (USEPA, 1999c)), two references to § 141.40 in § 141.24 became obsolete, but were not corrected in the 1999 rule. EPA is proposing to correct this technical error by eliminating the reference to requirements for monitoring for aldicarb, aldicarb sulfone, and aldicarb sulfoxide in § 141.24(h) and § 141.24(h)(7)(v).

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, [58 FR 51735, (October 4, 1993)] the Agency must determine whether 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 ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The ICR document prepared by EPA has been assigned EPA ICR number of 2192.01.

The information to be collected under today's proposed rule fulfills the statutory requirements of section 1445(a)(2) of SDWA, as amended in 1996. The data to be collected will describe the source of the water, location, and test results for samples taken from PWSs. The concentrations of any identified UCMR contaminants will be evaluated regarding health effects and will be considered for future regulation accordingly. Reporting is mandatory. The data are not subject to confidentiality protection.

The annual burden and cost estimates described below are for the implementation assumptions described in section IV, Cost and Benefits of the Rule, of today's proposed action. Respondents to the UCMR 2 will include 1,280 small water systems (800 for Assessment Monitoring, and 480 for Screening Survey monitoring), the 3,110 large PWSs, and the 56 States and Primacy agencies (4,446 total respondents). The frequency of response varies across respondents and years. System costs (particularly laboratory analytical costs) vary depending on the number of sampling locations. Most Assessment Monitoring systems will conduct sampling evenly across July 2007-June 2010 (*i.e.*, one-third in each of the 3 consecutive 12-month periods). Because the applicable ICR period is 2007–2009, there is one-half year of Assessment Monitoring activity (*i.e.*, January through June of 2010) that is not captured in the ICR estimates.

Small systems (those serving 10,000 or fewer) that are selected for UCMR 2 monitoring will sample an average of 2.2 times per system (*i.e.*, number of responses per system) across the three-year ICR period of 2007–2009. The average burden per response for small systems is estimated to be 3.1 hours. Large systems (those serving 10,001 to 100,000 people) and very large systems (those serving more than 100,000 people) will sample and report an average of 2.5 and 3.6 times per system, respectively, across the three-year ICR period of 2007–2009. The average burden per response for large and very large systems are estimated to be 8.9 and 12.9 hours, respectively. The larger burden per response for the very large systems reflects the fact that these systems typically have more sampling locations than large systems. States are assumed to have an average of 1.0 response per year, related to coordination with EPA and systems, with an average burden per response of 203.2 hours. In aggregate, during the ICR period of 2007–2009, the average response (*e.g.*, responses from systems and States) is associated with a burden of 10.7 hours, with a labor plus non-labor cost of $1,609 per response.

The annual average per respondent burden hours and costs for the ICR period of 2007–2009 are: Small systems—2.3 hour burden at $57 for labor; large systems—7.5 hours at $204 for labor, and $1,894 for analytical costs; very large systems—15.6 hours at $512 for labor, and $7,392 for analytical costs; and States—203.2 hours at $11,107 for labor. Annual average burden and cost per respondent (including both systems and States) is estimated to be 9.02 hours, with a labor plus non-labor cost of $1,355 per respondent (note that small systems do not pay for testing costs, so they only incur labor costs).

The Agency estimates the annual burden to EPA for proposed UCMR program activities during the ICR years of 2007–2009 to be approximately 9,533 hours, at an annual labor cost of $0.60 million. EPA's annual non-labor costs

are estimated to be $2.8 million. EPA's non-labor costs are primarily attributed to the cost of sample testing for small systems (testing is just under 90 percent of non-labor cost).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR Part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID No. OW–2004–0001. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this action for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 22, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by September 21, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposed action.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

The RFA provides default definitions for each type of small entity. Small entities are defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; 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.'' However, the RFA also authorizes an agency to use alternative definitions for each category of small entity, ''which are appropriate to the activities of the agency'' after proposing the alternative definition(s) in the **Federal Register** and taking comment 5 U.S.C. 601(3)–(5). In addition, to establish an alternative small business definition, agencies must consult with SBA's Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be PWSs serving 10,000 or fewer people, because this is the system size specified in SDWA as requiring special consideration with respect to small system flexibility. As required by the RFA, EPA proposed using this alternative definition in the **Federal Register**, (63 FR 7605, February 13, 1998 (USEPA, 1998a)), requested public comment, consulted with the Small Business Administration (SBA), and finalized the alternative definition in the Consumer Confidence Reports rulemaking, (63 FR 44511, August 19, 1998 (USEPA, 1998c)). As stated in that Final rule, the alternative definition would be applied to this regulation as well.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The small entities directly regulated by this proposed rule are PWSs serving 10,000 or fewer people. EPA has determined that the small entities subject to the requirements of this proposed rule are a subset of the small PWSs (those serving 10,000 or fewer people). The Agency has determined that 1,280 small PWSs (across Assessment Monitoring and the Screening Survey), or approximately 2 percent of small systems, will experience an impact of less than 0.6 percent of revenues/sales; the remainder of systems will not be impacted.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. To ensure that this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA will assume all costs for analyses of the samples and for shipping the samples from these systems to the laboratories contracted by EPA to analyze UCMR 2 samples. EPA has set aside $2.0 million each year from the State Revolving Fund (SRF) with its authority to use SRF monies for the purposes of implementing this provision of SDWA. Thus, the costs to these small systems will be limited to the labor hours associated with collecting a sample and preparing it for shipping.

The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

The evaluation of the overall impact on small systems, summarized in the preceding discussion, is further described as follows. EPA analyzed the impacts for privately-owned and publicly-owned water systems separately, due to the different economic characteristics of these ownership types. For publicly-owned systems, EPA used the ''revenue test,'' which compares annual system costs attributed to the rule to the system's annual revenues. EPA used a ''sales test'' for privately-owned systems, which involves the analogous comparison of UCMR-related costs to a privately-owned system's sales. EPA assumes that the distribution of the sample of participating small systems will reflect the proportions of publicly- and privately-owned systems in the national inventory. The estimated distribution of the representative sample, categorized by ownership type, source water, and system size, is presented below in Exhibit 12.

EXHIBIT 12.—NUMBER OF PUBLICLY- AND PRIVATELY-OWNED SYSTEMS SUBJECT TO UCMR 2

System size	Publicly-owned	Privately-owned	Total
Ground Water			
500 and under	102	528	630
501 to 3,300	179	61	240
3,301 to 10,000	95	19	114
Subtotal GW	376	608	984
Surface Water (and GWUDI)			
500 and under	48	53	101
501 to 3,300	95	6	101
3,301 to 10,000	87	7	94
Subtotal SW	230	66	296
Total of Small Water Systems	606	674	1,280

The basis for the UCMR 2 RFA certification for this proposed rule is as follows: For the 1,280 small water systems that will be affected, the average annual costs for complying with this rule represent less than 0.6 percent of system revenues or sales (the highest estimated percentage is for surface water/GWUDI systems serving 500 or fewer people, at 0.53 percent of its median sales). Exhibit 13 presents the yearly costs to small systems, and to EPA for the small system sampling program, along with an illustration of system participation for each year of the UCMR 2 program.

EXHIBIT 13.—EPA AND SMALL SYSTEMS COSTS FOR IMPLEMENTATION UCMR 2

Cost description	2007	2008	2009	2010	2011	Total
Costs to EPA for Small System Program (including Assessment Monitoring, and the Screening Survey)						
	$1,747,951	$3,495,903	$2,278,325	$530,374	$0	$8,052,553
Costs to Small Systems (including Assessment Monitoring, and the Screening Survey)						
	$122,838	$56,789	$37,731	$9,337	$0	$226,695
Total Costs to EPA and Small Systems for UCMR 2						
	$1,870,789	$3,552,692	$2,316,056	$539,711	$0	$8,279,248
System Monitoring Activity Time Line [1]						
Assessment Monitoring	⅓ PWSs Sample	⅓ PWSs Sample	⅓ PWSs Sample			800
Screening Survey	½ PWSs Sample	½ PWSs Sample				480

[1] Total number of systems is 1,280. No small system conducts both Assessment Monitoring and Screening Survey.

System costs are attributed to the additional labor required for reading about their requirements, monitoring, reporting, and record keeping. The estimated average annual burden across the five-year UCMR 2 implementation period of 2007–2011 is estimated to be 1.4 hours at $35 per small system. Average annual cost, in all cases, is less than 0.6 percent of system revenues/sales. As required by the SDWA, the Agency specifically structured the rule to avoid significantly affecting small entities by assuming all costs for laboratory analyses, shipping, and quality control for small entities. As a result, EPA incurs the entirety of the non-labor costs associated with UCMR 2 small system monitoring, or 97 percent of small system testing costs. Exhibits 14 and 15 present the estimated economic impacts in the form of a revenue test for publicly-owned systems and a sales test for privately-owned systems, respectively.

EXHIBIT 14.—UCMR 2 RELATIVE COST ANALYSIS FOR PUBLICLY-OWNED SYSTEMS (2007–2011)

System size	Annual number of systems impacted	Average annual hours per system (2007–2011)	Average annual cost per system (2007–2011)	"Revenue Test" [1] (percent)
Ground Water Systems				
500 and under	20	1.1	$26.38	0.11
501 to 3,300	36	1.3	33.43	0.02
3,301 to 10,000	19	1.8	46.50	0.01
Surface Water (and GWUDI) Systems				
500 and under	9	2.0	47.45	0.20
501 to 3,300	19	2.0	50.63	0.04
3,301 to 10,000	17	2.2	58.46	0.01

[1] The "Revenue Test" was used to evaluate the economic impact of an information collection on small government entities (*e.g.*, publicly-owned systems); costs are presented as a percentage of median annual revenue in each size category.

EXHIBIT 15.—UCMR 2 RELATIVE COST ANALYSIS FOR PRIVATELY-OWNED SYSTEMS (2007–2011)

System size	Annual number of systems impacted	Average annual hours per system (2007–2011)	Average annual cost per system (2007–2011)	"Sales Test" [1] (percent)
Ground Water Systems				
500 and under	105	1.1	$26.38	0.30
501 to 3,300	12	1.3	33.43	0.02
3,301 to 10,000	4	1.8	46.50	.01
Surface Water (and GWUDI) Systems				
500 and under	11	2.0	47.45	0.53
501 to 3,300	1	2.0	50.63	0.03
3,301 to 10,000	1	2.2	58.46	0.01

[1] The "Sales Test" was used to evaluate the economic impact of an information collection on small private entities (e.g., privately-owned systems); costs are presented as a percentage of median annual sales in each size category.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 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.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Total annual costs of today's proposed rule (across the implementation period of 2007–2011), for State, local, and Tribal governments and the private sector, are estimated to be $8.42 million, of which EPA will pay $2.32 million, or approximately 28 percent. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency will pay for the reasonable costs of sample analysis for the small PWSs required to monitor for unregulated contaminants under this proposed rule, including those owned and operated by small governments. The only costs that small systems will incur are those attributed to collecting the UCMR samples and packing them for shipping to the laboratory (EPA will pay for shipping). These costs are minimal. They are not significant or unique. Thus, today's rule is not subject to the requirements of UMRA section 203.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

The cost to State and local governments is minimal, and the rule does not preempt State law. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

EPA has concluded that this proposed rule will have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. As described previously, this proposed rule requires monitoring by all large systems (i.e., those serving more than 10,000 people); one Tribal water system (the Navajo Tribal Utility Authority) has been identified as a large system. This proposal rule also requires monitoring by a nationally representative sample of small systems (i.e., those serving 10,000 or fewer people). EPA estimates that approximately one percent of small Tribal systems will be selected as part of such sample.

With regard to the single large Tribal system, EPA estimates the average annual cost for a large system over the five-year rule period to be less than $1,500. Such cost is based on a labor component (associated with the collection of samples) and a non-labor component (associated with shipping and laboratory fees) and represents less than 0.05 percent of average revenue/sales for large systems.

With regard to small Tribal systems that may be selected as part of the nationally representative sample, EPA estimates the average annual cost over the five-year rule period to be $35. Such cost is based on the labor associated with collecting a sample and preparing it for shipping and represents less than 0.6 percent of average revenue/sales for small systems. All other small-system expenses (associated with shipping and laboratory fees) are paid by EPA.

EPA consulted with Tribal officials early in the process of developing the UCMR program to permit them to have meaningful and timely input into its development. In developing the original UCMR rule, EPA held stakeholder meetings and prepared background information for stakeholder review. EPA sent requests for review of stakeholder documents to nearly 400 Tribes, Tribal organizations, and small systems organizations to obtain their input. Representatives from the Indian Health Service (IHS) Sanitary Deficiency System (SDS) and Tribes were consulted regarding decisions on rule design, the design for the statistical selection of small systems, and potential costs.

Tribes raised issues concerning the selection of the nationally representative sample of small systems, particularly the manner in which Tribal systems would be considered under the sample selection process. EPA developed the sample frame for Tribal systems and Alaska Native water systems in response to those concerns. EPA worked with the Tribes, Alaska Natives, the IHS, and the States to determine how to classify each Tribal system for consideration in the statistically-based selection of the nationally representative sample of small systems. As a result of those discussions, small PWSs that are located in Indian country in each of the EPA Regions containing Indian country were evaluated as part of a Tribal category that receives selection consideration comparable to that of small systems outside of Indian country. Thus, Tribal systems have the same probability of being selected as other water systems in the stratified selection process that weighs systems by water source and size class by population served.

Today's proposed rule, addressing the next UCMR period, maintains the basic program design of the original UCMR, building upon the structure established by the original rule for this cyclical program. The primary changes include: (1) Improving the design of the Screening Survey for List 2 contaminants to increase the statistical strength of the sampling results; (2) updating the lists of contaminants to be monitored and the analytical methods approved to conduct that monitoring; (3) revising the ''data elements'' required to be reported; and (4) revising the implementation of the monitoring program to reflect ''lessons learned'' during UCMR 1.

As part of the development of this proposed rule, EPA held a public stakeholder meeting on October 23, 2003. This meeting was announced to the public in a **Federal Register** notice dated September 11, 2003. Prior to the meeting, background materials and rule development information were sent to specific stakeholders, including representatives from the Indian Health Service and the Native American Water Association.

EPA specifically solicits additional comment on this proposed rule from Tribal officials.

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

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is 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 proposed rule is part of the Agency's overall strategy for deciding whether to regulate the contaminants identified on the CCL (63 FR 10274, March 2, 1998 (USEPA, 1998b)). The purpose of today's proposed rule is to ensure that EPA has data on the occurrence of contaminants on the CCL where those data are lacking. EPA is also taking steps to ensure that the Agency will have data on the health effects of these contaminants on

children through its research program. The Agency will use these data (both contaminant occurrence and health effects) to help decide whether or not to regulate any of these contaminants.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. However, given EPA's interest in protecting children's health, as part of the provisions in the rule allowing State Governors to petition EPA to add contaminants to the UCMR Contaminant List, EPA is specifically asking Governors to include any information that might be available regarding disproportional risks to the health or safety of children. Such information would help inform EPA's decision making regarding the UCMR Contaminant List.

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

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. In preparing this proposed action, EPA searched for consensus methods published by the three major voluntary consensus method organizations, Standard Methods, Association of Analytical Communities International, and American Society for Testing and Materials, that would be acceptable for compliance determinations under SDWA for the Unregulated Contaminant Monitoring List. However, EPA identified no such standards. For those parameters included in this proposed action, EPA was unable to use methods from either EPA or voluntary consensus method organizations that were applicable to the monitoring required. Therefore, EPA proposes to use the methods development that the Agency conducted (described in section III.B), which was necessary to establish acceptable methods for the determination of these UCMR 2 parameters.

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), focuses Federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities.

By seeking to identify unregulated contaminants that may pose health risks via drinking water from all PWSs, UCMR furthers the protection of public health for all citizens, including minority and low-income populations using public water supplies. Using a statistically-derived set of systems for the nationally representative sample that is population-weighted within each system size category in each State, the proposed rule ensures that no group within the population is under-represented.

VII. Public Involvement in Regulation Development

EPA's Office of Ground Water and Drinking Water has developed a process for stakeholder involvement in its regulatory activities for the purpose of providing early input to regulation development. When designing and developing the UCMR program, in the late 1990s, EPA held meetings for developing the CCL, establishing the information requirements of the NCOD, and selecting priority contaminants for monitoring. During the initial development of the UCMR program, stakeholders, including PWSs, States, industry, and other organizations attended meetings to discuss the UCMR. Seventeen other meetings were held specifically concerning UCMR development. For a description of public involvement activities related to the UCMR, please see the discussion in the September 1999 UCMR Final Rule **Federal Register** at 64 FR 50556 (USEPA, 1999c).

Specific to the development of UCMR 2, a stakeholder meeting was held on October 29, 2003, in Washington, DC. There were 25 attendees, representing State agencies, federal agencies, laboratories, PWSs, and drinking water associations. The topics of presentations and discussions included: Rationale for selecting a new list of proposed contaminants; analytical methods to be used in measuring these contaminants; sampling design, particularly for the Screening Survey monitoring; procedure for determining LCMRLs; validation of laboratory performance at or below the MRL; revisions to data elements; and other proposed revisions based on lessons learned during implementation of UCMR 1.

VIII. References

Agency for Toxic Substances and Disease Registry (ATSDR). 1989. Toxicological Profile for N-Nitrosodimethylamine. Atlanta, GA: Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services. Available on the Internet at: *http://www.atsdr.cdc.gov/toxprofiles/tp141.pdf.*

ATSDR. 1995a. Toxicological Profile for 1,3-Dinitrobenzene and 1,3,5-Trinitrobenzene. Available on the Internet at: *http://www.atsdr.cdc.gov/toxprofiles/tp74.html.*

ATSDR. 1995b. Toxicological Profile for RDX. Available on the Internet at: *http://www.atsdr.cdc.gov/toxprofiles/tp78.html.*

ATSDR. 1995c. Toxicological Profile for 2,4,6-Trinitrotoluene. Available on the Internet at: *http://www.atsdr.cdc.gov/toxprofiles/tp81.html.*

ATSDR. 2002. Toxicological Profile for Polybrominated Biphenyls and Polybrominated Diphenyl Ethers (PBBs AND PBDEs)—Draft for Public Comment. September 2002. Available on the Internet at: *http://www.atsdr.cdc.gov/toxprofiles/tp68.html.*

Association of State Drinking Water Administrators (ASDWA). 2003. Public Health Protection Threatened by Inadequate Resources for State Drinking Water Programs—An Analysis of State Drinking Water Programs Resources, Needs, and Barriers. April 2003. Available on the Internet at: *http://www.asdwa.org/.*

Burrows, W. D. 1982. Tertiary treatment of effluent from Holston AAP industrial liquid waste treatment facility I. Batch carbon adsorption studies: TNT, RDX, HMX, TAX, and SEX. Technical Report 8207. Document no. ADA121244. U.S. Army Armament Research and Development Command, NJ.

California Department of Health Services (CADHS). 2002. Studies on the Occurrence of NDMA in Drinking Water. Available on the Internet at: *http://www.dhs.ca.gov/ps/ddwem/chemicals/NDMA/studies.htm.*

California Environmental Protection Agency (CAEPA). 2002. Draft Groundwater Information Sheet: N-Nitrosodimethylamine (NDMA). Prepared By: John Borkovitch, R.G., Revised: October 23, 2002. Available on the Internet at: *http://www.swrcb.ca.gov/gama/docs/ndma_oct2002_rev3.pdf.*

Choi, J., S.E. Duirk, and R.L. Valentine. 2002. Mechanistic studies of N-nitrosodimethylamine (NDMA) formation in chlorinated drinking water. Journal of Environmental Monitoring. Vol. 4, No. 2. pp. 249–52.

Choi, J., and R.L. Valentine. 2002a. Formation of N-nitrosodimethylamine (NDMA) from reaction of monochloramine: a new disinfection by-product. Water Research. Vol. 36, No. 4. pp. 817–824.

Choi, J., and R.L. Valentine. 2002b. A kinetic model of N-nitrosodimethylamine (NDMA) formation during water chlorination/chloramination. Water Science and Technology. Vol. 46, No. 3. pp. 65–71.

Darnerud, P.O., G.S. Erickson, T. Johannesson, P.B. Larson, and M. Viluksela. 2001. Polybrominated Diphenyl Ethers: Occurrence, Dietary Exposure, and Toxicology. Environmental Health Perspectives Supplements. Vol. 109, No. S1. Available on the Internet at: *http://ehp.niehs.nih.gov/members/2001/suppl-1/49-68darnerud/darnerud-full.html.*

Hazardous Substances Database (HSDB). 1986. Complete Record for Dimethoate. Available on the Internet at: *http://toxnet.nlm.nih.gov/cgi-bin/sis/htmlgen?HSDB.*

Hites, R. 2004. Polybrominated Diphenyl Ethers in the Environment and in People: A Meta-Analysis of Concentration. Environmental Science and Technology. Vol. 38, No. 4. pp. 945–956.

Mitch, W.A., and D.L. Sedlak. 2002. Formation of N-Nitrosodimethylamine (NDMA) from Dimethylamine during Chloramination. Environmental Science and Technology. Vol. 36, No. 4. pp. 588–595.

Scribner, E.A., E.M. Thurman, and L.R. Zimmerman. 2000. ''Analysis of Selected Herbicide Metabolites in Surface and Ground Water of the United States.'' Kolpin, D.W. (ed.), Special Issue: Fate and Transport of Agricultural Chemicals in the Mississippi River Basin: Science of the Total Environment. 248(2,3):159–168. Available on the Internet at: *http://ks.water.usgs.gov/Kansas/pubs/reports/wrir.99-4018B.toxicss2.pdf.*

USEPA. 1994. Pesticide Tolerances for Acetochlor; Rules and Regulations. **Federal Register**. Vol. 59, No. 56. p. 13654, March 23, 1994.

USEPA. 1995. Method 525.2—Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry. Available on the Internet at: *http://www.NEMI.gov.*

USEPA. 1996a. Pesticide Tolerances for Dimethenamid. **Federal Register**. Vol. 61, No. 52. p. 10681, March 15, 1996.

USEPA. 1996b. National Primary Drinking Water Regulations: Monitoring Requirements for Public Drinking Water Supplies: Cryptosporidium, Giardia, Viruses, Disinfection Byproducts, Water Treatment Plant Data and Other Information Requirements. **Federal Register**. Vol. 61, No. 94. p. 24354, May 14, 1996.

USEPA. 1997. Announcement of the Draft Drinking Water Contaminant Candidate List; Notice. **Federal Register**. Vol. 62, No. 193. p. 52194, October 6, 1997.

USEPA. 1998a. National Primary Drinking Water Regulations: Consumer Confidence Reports; Final Rule. **Federal Register**. Vol. 63, No. 30. p. 7605, February 13, 1998.

USEPA. 1998b. Announcement of the Drinking Water Contaminant Candidate List; Notice. **Federal Register**. Vol. 63, No. 40. p. 10274, March 2, 1998.

USEPA. 1998c. National Primary Drinking Water Regulations: Consumer Confidence Reports. **Federal Register**. Vol. 63, No. 160. p. 44511, August 19, 1998.

USEPA. 1999a. Federal Facilities Forum Issue: Field Sampling and Selecting On-site Analytical Methods for Explosives in Water. Office of Research and Development, Office of Solid Waste and Emergency Response. Prepared by A.B. Crickett, H.D. Craig, and T.F. Jenkins. EPA 600–S–99–002. May 1999. Available on the Internet at: *http://www.epa.gov/tio/tsp/download/water.pdf.*

USEPA. 1999b. Human Health Risk Assessment: Terbufos. Office of Prevention, Pesticides and Toxic Substances. September 2, 1999. Available on the Internet at: *http://www.epa.gov/pesticides/op/terbufos/_revrisk.pdf.*

USEPA. 1999c. Revisions to the Unregulated Contaminant Monitoring Regulation for Public Water Systems; Final Rule. **Federal Register**. Vol. 64, No. 180. p. 50556, September 17, 1999.

USEPA. 1999d. Dimethoate Revised Risk Assessment. Office of Prevention, Pesticides and Toxic Substances. December 16, 1999. Available on the Internet at: *http://www.epa.gov/pesticides/op/dimethoate/hedrra.pdf.*

USEPA. 1999e. EPA Method 314.0—Determination of Perchlorate in Drinking Water Using Ion Chromatography. Available on the Internet at: *http://www.epa.gov/safewater/methods/sourcalt.html.*

USEPA. 1999f. Revised Chapter for Dimethoate RED. Available on the Internet at: *http://www.epa.gov/pesticides/op/dimethoate/efedrra.pdf.*

USEPA. 2000a. Unregulated Contaminant Monitoring Regulation for Public Water Systems: Analytical Methods for Perchlorate and Acetochlor; Announcement of Laboratory Approval and Performance Testing (PT) Program for the Analysis of Perchlorate; Final Rule and Proposed Rule. **Federal Register**. Vol. 65, No. 42. p. 11372, March 2, 2000.

USEPA. 2000b. Science Policy Council Handbook, Peer Review. EPA 100–B–00–001. December 2000. Available on the Internet at: *http://epa.gov/osa/spc/htm/rchandbk.pdf.*

USEPA. 2001a. Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods for List 2 Contaminants; Clarifications to the Unregulated Contaminant Monitoring Regulation. **Federal Register**. Vol. 66, No. 8. p. 2273, January 11, 2001.

USEPA. 2001b. Unregulated Contaminant Monitoring Regulation for Public Water Systems; Analytical Methods of List 2 Contaminants; Clarifications to the Unregulated Contaminant Monitoring Regulation; Correction. **Federal Register**. Vol. 66, No. 95. p. 27215, May 16, 2001.

USEPA. 2001c. Statistical Design and Sample Selection for the UCMR 1. EPA 815–R–01–004. August 2001. Available on the Internet at: *http://www.epa.gov/safewater/ucmr/ucmr1/pdfs/guidance_ucmr1_statistical_design.pdf.*

USEPA. 2001d. Unregulated Contaminant Monitoring Regulation for Public Water Systems; Amendment to the List 2 Rule and Partial Delay of Reporting of Monitoring Results. **Federal Register**. Vol. 66, No. 171. p. 46221, September 4, 2001.

USEPA. 2002a. 2002 Edition of the Drinking Water Standards and Health Advisories. EPA 822–R–02–038.

USEPA. 2002b. Unregulated Contaminant Monitoring Regulation for Public Water Systems; Establishment of Reporting Date. **Federal Register**. Vol. 67, No. 48. p. 11043, March 12, 2002.

USEPA. 2002c. EPA Dockets; EPA's New Electronic Public Docket and Comment System; Notice of Availability. **Federal Register**. Vol. 67, No. 105. p. 38102, May 31, 2002.

USEPA. 2002d. Unregulated Contaminant Monitoring Regulation: Approval of Analytical Method for Aeromonas; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants. **Federal Register**. Vol. 67, No. 209. p. 65888, October 29, 2002.

USEPA. 2003a. Dimethoate Summary. Office of Prevention, Pesticides and Toxic Substances. Last updated January 6, 2003. Available on the Internet at: *http://www.epa.gov/pesticides/op/dimethoate/dimethsumm.htm.*

USEPA. 2003b. National Primary Drinking Water Regulations: Stage 2 Disinfectants and Disinfection Byproducts Rule; National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical Contaminants; Proposed Rule. **Federal Register**. Vol. 68, No. 159. p. 49547, August 18, 2003.

USEPA. 2003c. EPA Method 529—Determination of Explosives and Related Compounds in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS). Available on the Internet at: *http://www.epa.gov/nerlcwww/ordmeth.htm.*

USEPA. 2003d. USEPA Integrated Risk Information System. Available on the Internet at: *http://www.epa.gov/iris/index.html.* Accessed for the following contaminants: Acetochlor—CASRN 34256–82–1; Alachlor—CASRN 15972–60–8; Dimethoate—CASRN 60–51–5; m-Dinitrobenzene—CASRN 99–65–0; Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)—CASRN 121–82–4; Metolachlor—CASRN 51218–45–2; N–Nitrosodimethylamine—CASRN 62–75–9; and, 2,4,6-Trinitrotoluene (TNT)—CASRN 118–96–7.

USEPA. 2003e. UCMR 2: Contaminant Selection Rationale. Draft background documentation presented at the UCMR 2

stakeholder meeting, held on October 29, 2003 in Washington, DC.

USEPA. 2004a. 2004 Edition of the Drinking Water Standards and Health Advisories. EPA 822–R–04–005.

USEPA. 2004b. EPA Method 314.1—Determination of Perchlorate in Drinking Water Using Inline Column Concentration/Matrix Elimination Ion Chromatography with Suppressed Conductivity Detection. Available on the Internet at: *http://www.epa.gov/safewater/methods/sourcalt.html.*

USEPA. 2004c. EPA Method 331.0—Determination of Perchlorate in Drinking Water by Liquid Chromatography Electrospray Ionization Mass Spectrometry. EPA 815–R–05–007. January 2005. Available on the Internet at: *http://www.epa.gov/safewater/methods/sourcalt.html.*

USEPA. 2004d. EPA Method 332.0—Determination of Perchlorate in Drinking Water Using Ion Chromatography with Suppressed Conductivity and Electrospray Ionization Mass Spectrometry. Available on the Internet at: *http://www.epa.gov/nerlcwww/ordmeth.htm.*

USEPA. 2004e. EPA Method 521—Determination of Nitrosamines in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography with Large Volume Injection and Chemical Ionization Tandem Mass Spectrometry (MS/MS). Available on the Internet at: *http://www.epa.gov/nerlcwww/ordmeth.htm.*

USEPA. 2004f. EPA Method 527—Determination of Selected Pesticides and Flame Retardants in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS). EPA 815–R–05–005. April 2005. Available on the Internet at: *http://www.epa.gov/safewater/methods/sourcalt.html.*

USEPA. 2004g. EPA Method 535, Revision 1.1—Measurement of Chloroacetanilide and Other Acetamide Herbicide Degradates in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS). Available on the Internet at: *http://www.epa.gov/nerlcwww/ordmeth.htm.*

USEPA. 2004h. Estimating Potency Scores: An Exercise. Office of Science and Technology, Health and Ecological Criteria Division. Draft, June 29, 2004.

USEPA. 2004i. Evaluation of the Lowest Concentration Minimum Reporting Level (LCMRL) and the Minimum Reporting Level (MRL) Primary Analyte Analysis. October 2004.

USEPA. 2004j. Statistical Protocol for the Determination of the Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and Validation of the Minimum Reporting Level (MRL). EPA 815–R–05–006.

USEPA. 2004k. UCMR 2 Laboratory Approval Requirement and Information Document. Available on the Internet at: *http://www.epa.gov/safewater/ucmr/ucmr2/index.html.*

USEPA. 2005. Drinking Water Candidate Contaminant List 2; Final Notice. **Federal Register**. Vol. 70, No. 36. p. 9071, February 24, 2005.

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and record keeping requirements, Water supply.

Dated: August 12, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

Subpart C—[Amended]

2. Section 141.24 is amended by revising paragraphs (h) introductory text and (h)(7)(v) to read as follows:

§ 141.24 Organic chemical, sampling and analytical requirements.

* * * * *

(h) Analysis of the contaminants listed in § 141.61(c) for the purposes of determining compliance with the maximum contaminant level shall be conducted as follows:

* * * * *

(7) * * *

(v) If the monitoring results in detection of one or more of certain related contaminants (heptachlor and heptachlor epoxide), then subsequent monitoring shall analyze for all related contaminants.

* * * * *

Subpart D—[Amended]

3. Section 141.35 is revised to read as follows:

§ 141.35 Reporting for unregulated contaminant monitoring.

(a) *General applicability.* This section applies to any owner or operator of a public water system (PWS) required to monitor for unregulated contaminants under § 141.40(a): Such owner or operator is referred to as ''you.'' This section specifies the information that must be reported to EPA prior to the commencement of monitoring, and describes the process for reporting monitoring results to EPA. For the purposes of this section, PWS ''population served'' includes the sum of the retail population served directly by the PWS plus the population served by any consecutive system(s) receiving all or part of its finished water from that PWS. For purposes of this section, the term ''State'' refers to the State or Tribal government entity that has jurisdiction over your PWS even if that government does not have primary enforcement responsibility for PWSs under the Safe Drinking Water Act. For purposes of this section, the term ''PWS Official'' refers to the person at your PWS who is able to function as the official spokesperson for the system's Unregulated Contaminant Monitoring Regulation (UCMR) activities; and the term ''PWS Technical Contact'' refers to the person at your PWS who is responsible for the technical aspects of your UCMR activities, such as details concerning sampling and reporting.

(b) *Reporting by all systems.* You must meet the reporting requirements of this paragraph if you meet the applicability criteria in § 141.40(a)(1) and (2).

(1) *Where to submit UCMR reporting requirement information.* Some of your reporting requirements are to be fulfilled electronically, and others by mail. Information that must be submitted using EPA's electronic data reporting system can be accessed through: *http://www.epa.gov/safewater/ucmr/ucmr2/reporting.html.* Documentation that is required to be mailed can be submitted either: to UCMR Sampling Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or by e-mail at *UCMR_Sampling_Coordinator@epa.gov;* or by fax at (513) 569–7191. In addition, you must notify the public of the monitoring results as provided in Subpart O (Consumer Confidence Reports) and Subpart Q (Public Notification) of this part.

(2) *Contacting EPA if your system does not meet applicability criteria or has status change.* If you have received a letter from EPA concerning your required monitoring and your system does not meet the applicability criteria for UCMR established in § 141.40(a)(1) and (2), or if a change occurs at your system that may affect your requirements under UCMR as defined in § 141.40(a)(3)–(5), you must fax, mail, or e-mail a letter to EPA, as specified in paragraph (b)(1) of this section. The letter must be from your PWS Official and must include an explanation as to why the UCMR requirements are not applicable to your PWS, or have changed for your PWS, along with the appropriate contact information. EPA will make an applicability determination based on your letter and in consultation with the State when necessary. If you meet the applicability

requirements specified in § 141.40(a)(1) and (2), you are subject to UCMR requirements until or unless you receive a letter from EPA agreeing that you do not meet the applicability criteria.

(c) *Reporting by large systems.* If you serve a population of more than 10,000 people, and meet the applicability criteria in § 141.40(a)(1) and (2)(i), you must meet the reporting requirements in paragraph (c)(1) through (8) of this section.

(1) *Contact information.* You must provide contact information by [DATE 90 DAYS AFTER PUBLICATION OF THE FINAL RULE], and provide updates within 30 days if this information changes. The contact information must be submitted using EPA's electronic data reporting system, as specified in paragraph (b)(1) of this section, and include the name, affiliation, mailing address, phone number, fax number, and e-mail address for your PWS Technical Contact and your PWS Official.

(2) *Sampling location and inventory information.* You must provide your sampling location and inventory information by [DATE 210 DAYS AFTER PUBLICATION OF THE FINAL RULE] using EPA's electronic data reporting system. You must submit the following information for each sampling location, or for each approved representative sampling location (as specified in paragraph (c)(3) of this section regarding representative sampling locations): PWS identification (PWSID) code; PWS facility identification code; sampling point identification code; sampling point type identification code; sampling location water type, which are defined in Table 1, paragraph (e) of this section. If this information changes, you must report updates to EPA's electronic data reporting system within 30 days of the change.

(3) *Proposed ground water representative sampling locations.* Some systems that use ground water as a source and have multiple entry points to the distribution system (EPTDSs) may propose monitoring at representative entry point(s), rather than monitor at every EPTDS, as follows:

(i) *Qualifications.* Large PWSs that have State-approved alternate EPTDS sampling locations, as provided for under §§ 141.23(a)(1), 141.24(f)(1), and 141.24(h)(1), may submit a copy of documentation from their State that approves their alternative sampling plan for EPTDSs. PWSs that do not have an approved alternative EPTDS sampling plan may submit a proposal to sample at representative EPTDS(s) rather than at each individual EPTDS if: they use ground water as a source; all of their well sources have either the same treatment or no treatment; and they have an EPTDS for each well within a well field (resulting in multiple EPTDSs from the same source, such as an aquifer). You must submit a copy of the existing alternate EPTDS sampling plan or your representative well proposal, as appropriate, by [INSERT DATE 120 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(ii) *Demonstration.* If you are submitting a proposal to sample at representative EPTDS(s) rather than at each individual EPTDS, you must demonstrate that any EPTDS that you select as representative of the ground water you supply from multiple wells is associated with a well that draws from the same aquifer as the wells it will represent. You must submit the following information for each proposed representative sampling location: PWSID Code, PWS facility identification code, and sampling point identification code (as defined in Table 1, paragraph (e) of this section). You must also include documentation to support your proposal that the specified wells are representative of other wells. This documentation can include system-maintained well logs or construction drawings indicating comparable depths (relative to elevation datum) of screened intervals, and details of well casings and grouting; data demonstrating relative homogeneity of water quality constituents (*e.g.*, pH, dissolved oxygen, conductivity, iron, manganese) in samples drawn from each well; and data showing that your wells are located in a limited geographic area (*e.g.*, all wells within a 0.5 mile radius) and/or, if available, the hydrogeologic data indicating the time of travel separating the representative well from each of the individual wells it represents (*e.g.*, all wells within a five-year time of travel delineation). Your proposal must be sent in writing to EPA, as specified in paragraph (b)(1) of this section. You must also provide a copy of this information to the State, unless otherwise directed by the State. Information about the actual or potential occurrence or non-occurrence of contaminants in an individual well, or a well's vulnerability to contamination must not be used as a basis for selecting a representative well.

(iii) *Approval.* EPA or the State (as specified in the Partnership Agreement reached between the State and EPA) will review your proposal, coordinate any necessary changes with you, and approve the final list of EPTDSs where you will be required to monitor. Your plan will not be final until you receive written approval from EPA or the State.

(4) *Contacting EPA if your PWS has not been notified of requirements.* If you believe you are subject to UCMR requirements, as defined in § 141.40(a)(1) and (2)(i), and you have not been notified by either EPA or your State by [DATE 150 DAYS AFTER PUBLICATION OF THE FINAL RULE], you must send a letter to EPA, as specified in paragraph (b)(1) of this section. The letter must be from your PWS Official, and must include an explanation as to why the UCMR requirements are applicable to your system along with the appropriate contact information. A copy of the letter must also be submitted to the State, as directed by the State. EPA will make an applicability determination based on your letter, and in consultation with the State when necessary, and will notify you regarding your applicability status and required sampling schedule. However, if your PWS meets the applicability criteria specified in § 141.40(a)(1) and (2)(i), you are subject to the UCMR monitoring and reporting requirements, regardless of whether or not you have been notified by the State or EPA.

(5) *Notifying EPA if your PWS cannot sample according to schedule.* You may change you Assessment Monitoring (List 1) or Screening Survey (List 2) schedule up to [DATE 210 DAYS AFTER PUBLICATION OF THE FINAL RULE] using EPA's electronic data reporting system, as specified in paragraph (b)(1) of this section. After these dates have passed, if your PWS cannot sample according to your assigned sampling schedule (*e.g.*, because of budget constraints, or if a sampling location will be closed during scheduled month of monitoring), you must fax, mail, or e-mail a letter to EPA, as specified in paragraph (b)(1) of this section, prior to the scheduled sampling date. You must include an explanation of why the samples cannot be taken according to the assigned schedule, and requesting an alternative schedule. You are subject to your assigned UCMR sampling schedule or the schedule that you revised on or before [DATE 210 DAYS AFTER PUBLICATION OF THE FINAL RULE], until and unless you receive a letter from EPA specifying a new schedule.

(6) *Reporting monitoring results.* For each sample, you must report the information specified in Table 1 of paragraph (e) of this section, using EPA's electronic data reporting system. If you are conducting Assessment Monitoring, you must include data elements 1 through 5, and 7 through 15;

and if you are conducting Screening Survey, you must include elements 1 through 15. You also must report any changes made to data elements 1 through 6 to EPA, in writing, explaining the nature and purpose of the proposed change, as specified in paragraph (b)(1) of this section.

(i) *Electronic reporting system.* You are responsible for ensuring that the laboratory conducting unregulated contaminant analysis posts the analytical results to EPA's electronic reporting system. You are also responsible for reviewing, approving, and submitting those results to EPA.

(ii) *Reporting schedule.* You must ensure that your laboratory posts the data in EPA's electronic data reporting system within 120 days from the sample collection date (sample collection must occur as specified in § 141.40(a)(4)). You have 60 days from when the laboratory posts the data in EPA's electronic data reporting system to review, approve, and submit the data to the State and EPA, at the Web address specified in paragraph (b)(1) of this section. If you do not take action on the data within 60 days of the laboratory's posting to the electronic reporting system, the data will be considered approved by you, and available for EPA and State review.

(7) *Only one set of results accepted.* If you report more than one set of valid results for the same sampling location and the same sampling event (for example, because you have had more than one laboratory analyze replicate samples collected under § 141.40(a)(5), or because you have collected multiple samples during a single monitoring event at the same sampling location), EPA will use the highest of the reported values as the official result.

(8) *No reporting of previously collected data.* You cannot report previously collected data to meet the testing and reporting requirements for the contaminants listed in § 141.40(a)(3). All analyses must be performed by laboratories approved by EPA to perform UCMR analyses using the analytical methods specified in Table 1 of § 141.40(a)(3) and using samples collected according to the approved monitoring plan. Such requirements preclude the possibility of ''grandfathering'' previously collected data.

(d) *Reporting by small systems.* If you serve a population of 10,000 or fewer people, and you are notified that you have been selected for UCMR monitoring, your reporting requirements will be specified within the materials that EPA sends you, including a request for contact information, and a request for information associated with the sampling kit.

(1) *Contact information.* EPA will send you a notice requesting contact information for key individuals at your system, including name, affiliation, mailing address, phone number, fax number, and e-mail address. These individuals include your PWS Technical Contact and your PWS Official. You are required to provide this information within 90 days of receiving the notice from EPA. If this information changes, you also must provide updates within 30 days of the change.

(2) *Reporting sampling information.* You must record data elements listed in Table 1 of paragraph (e) of this section, on each sample form and sample bottle provided to you by your UCMR Sampling Coordinator. If you are conducting Assessment Monitoring, you must include elements 1 through 5, and 7; and if you are conducting Screening Survey, you must include elements 1 through 7. You must send this information as specified in the instructions of your sampling kit, which will include the due date and return address. You must report any changes made in data elements 1 through 6 by mailing or e-mailing an explanation of the nature and purpose of the proposed change to EPA, as specified in paragraph (b)(1) of this section.

(e) *Data elements.* Table 1 defines the data elements that must be provided with UCMR sample results.

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS

Data element	Definition
1. Public Water System Identification (PWSID) Code.	The code used to identify each PWS. The code begins with the standard 2-character postal State abbreviation or Region code; the remaining 7 numbers are unique to each PWS in the State. The same identification code must be used to represent the PWS identification for all current and future UCMR monitoring.
2. Public Water System Facility Identification Code.	An identification code established by the State or, at the State's discretion, by the PWS, following the format of a 5-digit number unique within each PWS for each applicable facility (*i.e.*, for each source of water, treatment plant, distribution system, or any other facility associated with water treatment or delivery). The same identification code must be used to represent the facility identification for all current and future UCMR monitoring.
3. Water Source Type	The type of source water that supplies a water system facility. Systems must report one of the following codes for each sampling location: SW = surface water (to be reported for water facilities that are served all or in part by a surface water source). GW = ground water (to be reported for water facilities that are served entirely by a ground water source). GU = ground water under the direct influence of surface water (to be reported for water facilities that are served all or in part by ground water under the direct influence of surface water).
4. Sampling Point Identification Code	An identification code established by the State, or at the State's discretion, by the PWS, unique within each applicable facility, for each applicable sampling location (*i.e.*, entry point to the distribution system or distribution system sample at maximum residence time). The same identification code must be used to represent the sampling location for all current and future UCMR monitoring.
5. Sampling Point Type Identification Code	An identification code corresponding to the location of the sampling point. EP = entry point to the distribution system. MR = distribution system sample at maximum residence time.
6. Disinfectant Residual Type	The type of disinfectant used to maintain a residual in the distribution system for each Screening Survey sampling point. To be reported by systems required to conduct Screening Survey monitoring. Systems must report using the following codes for each Screening Survey sampling location (*i.e.*, EP, MR): CL = chlorine

TABLE 1.—UNREGULATED CONTAMINANT MONITORING REPORTING REQUIREMENTS—Continued

Data element	Definition
	CA = chloramine OT = all other types of disinfectant (*e.g.*, chlorine dioxide) ND = no disinfectant used.
7. Sample Collection Date	The date the sample is collected, reported as 4-digit year, 2-digit month, and 2-digit day.
8. Sample Identification Code	An alphanumeric value up to 30 characters assigned by the laboratory to uniquely identify containers, or groups of containers, containing water samples collected at the same sampling location for the same sampling date.
9. Contaminant	The unregulated contaminant for which the sample is being analyzed.
10. Analytical Method Code	The identification code of the analytical method used.
11. Sample Analysis Type	The type of sample collected and/or prepared, as well as the fortification level. Permitted values include: FS = field sample; sample collected and submitted for analysis under this rule. LFSM = laboratory fortified sample matrix; a UCMR field sample with a known amount of the contaminant of interest added. LFSMD = laboratory fortified sample matrix duplicate; duplicate of the laboratory fortified sample matrix. CF = concentration fortified; reported with sample analysis types LFSM and LFSMD, the concentration of a known contaminant added to a field sample.
12. Analytical Results—Sign	A value indicating whether the sample analysis result was: (<) ''less than'' means the contaminant was not detected, or was detected at a level below the Minimum Reporting Level. (=) ''equal to'' means the contaminant was detected at the level reported in ''Analytical Result—Value.''
13. Analytical Result—Value	The actual numeric value of the analysis for chemical and microbiological results for: field samples; laboratory fortified matrix samples; laboratory fortified sample matrix duplicates; and concentration fortified.
14. Laboratory Identification Code	The code, assigned by EPA, used to identify each laboratory. The code begins with the standard two-character State postal abbreviation; the remaining 5 numbers are unique to each laboratory in the State.
15. Sample Event Code	A code assigned by the PWS for each sample event. This will associate samples with the PWS monitoring plan to allow EPA to track compliance and completeness. Systems must assign the following codes: SE1 = represents samples collected to meet the UCMR monitoring requirement for the first sampling period (all source types). SE2 = represents samples collected to meet the UCMR monitoring requirement for the second sampling period (all source types). SE3 = represents samples collected to meet the UCMR monitoring requirement for the third sampling period (surface water and GWUDI sources only). SE4 = represents samples collected to meet the UCMR monitoring requirement for the fourth sampling period (surface water and GWUDI sources only).

Subpart E—[Amended]

4. Section 141.40 is revised to read as follows:

§ 141.40 Monitoring requirements for unregulated contaminants.

(a) *General applicability.* This section specifies the monitoring and quality control requirements that must be followed if you are a public water system (PWS) that is subject to the Unregulated Contaminant Monitoring Regulation (UCMR), as specified in paragraphs (a)(1) and (2) of this section. In addition, this section specifies the UCMR requirements for State and Tribal participation. For the purposes of this section, PWS ''population served'', ''State'', ''PWS Official'', and ''PWS Technical Contact'' are as defined in § 141.35(a). The determination of whether a PWS is required to monitor under this rule is based on the type of system (e.g., community water system, non-transient non-community water system, etc.); whether or not the system purchases all of its water from another system; and its population served as of June 30, 2005.

(1) *Applicability to transient non-community systems.* If you own or operate a transient non-community water system, you do not have to monitor that system for unregulated contaminants.

(2) *Applicability to community water systems and non-transient non-community water systems.*

(i) *Large systems.* If you own or operate a wholesale or retail PWS (other than a transient non-community system) that serves more than 10,000 people, and do not purchase your entire water supply as finished water from another PWS, you must monitor according to the specifications in this paragraph. If you believe that your applicability status is different than EPA has specified in the notification letter that you received, or if you are subject to UCMR requirements and you have not been notified by either EPA or your State, you must report to EPA, as specified in § 141.35(b)(1) and (2), respectively.

(A) Assessment Monitoring. You must monitor for the unregulated contaminants on List 1 of Table 1, Unregulated Contaminant Monitoring Regulation (UCMR) Contaminant List, in paragraph (a)(3) of this section. If you serve a population of more than 10,000 people, you are required to perform this monitoring regardless of whether or not you have been notified by the State or EPA.

(B) Screening Survey. You must monitor for the unregulated contaminants on List 2 (Screening Survey) of Table 1, as specified in paragraph (a)(3) of this section, if your system serves 10,001 to 100,000 people and you are notified by EPA or your State that you are part of the State Monitoring Plan for Screening Survey testing. If your system serves more than 100,000 people, you are required to conduct this Screening Survey testing regardless of whether or not you have been notified by the State or EPA.

(C) Pre-Screen Testing. You must monitor for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the Pre-Screen Testing.

(ii) *Small systems.* Small PWSs, as defined in this paragraph, will not be selected to monitor for any more than one of the three monitoring lists provided in Table 1, UCMR Contaminant List, in paragraph (a)(3) of this section. EPA will provide sample containers, provide pre-paid air bills for shipping the sampling materials, conduct the laboratory analysis, and report and review monitoring results for all small systems selected to conduct monitoring under paragraphs (a)(2)(ii)(A) through (C) of this section. If you own or operate a PWS (other than a transient system) that serves 10,000 or fewer people and do not purchase your entire water supply from another PWS, you must monitor as follows:

(A) Assessment Monitoring. You must monitor for the unregulated contaminants on List 1 of Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring Plan for Assessment Monitoring.

(B) Screening Survey. You must monitor for the unregulated contaminants on List 2 of Table 1, in paragraph (a)(3) of this section, if notified by your State or EPA that you are part of the State Monitoring Plan for the Screening Survey.

(C) Pre-Screen Testing. You must monitor for the unregulated contaminants on List 3 of Table 1, in paragraph (a)(3) of this section, if you are notified by your State or EPA that you are part of the State Monitoring plan for Pre-Screen Testing.

(3) *Analytes to be monitored.* Lists 1, 2, and 3 of unregulated contaminants are provided in the following table:

TABLE 1.—UCMR CONTAMINANT LIST

1—Contaminant	2—CAS registry number	3—Analytical methods [a]	4—Minimum reporting level [b]	5—Sampling location [c]	6—Period during which monitoring to be completed
LIST 1: ASSESSMENT MONITORING CHEMICAL CONTAMINANTS					
1. Dimethoate	60–51–5	EPA 527 [d]	0.71 µg/L	EPTDS	7/1/2007–6/31/2010.
2. Terbufos sulfone	56070–16–7	EPA 527 [d]	0.44 µg/L	EPTDS	7/1/2007–6/31/2010.
3. 2,2',4,4'-tetrabromodiphenyl ether (BDE–47).	5436–43–1	EPA 527 [d]	0.33 µg/L	EPTDS	7/1/2007–6/31/2010.
4. 2,2',4,4',5-pentabromodiphenyl ether (BDE–99).	60348–60–9	EPA 527 [d]	0.92 µg/L	EPTDS	7/1/2007–6/31/2010.
5. 2,2',4,4',5,5'-hexabromobiphenyl (245–HBB).	59080–40–9	EPA 527 [d]	0.72 µg/L	EPTDS	7/1/2007–6/31/2010.
6. 2,2',4,4',5,5'-hexabromodiphenyl ether (BDE–153).	68631–49–2	EPA 527 [d]	0.85 µg/L	EPTDS	7/1/2007–6/31/2010.
7. 2,2',4,4',6-pentabromodiphenyl ether (BDE–100).	189084–64–8	EPA 527 [d]	0.52 µg/L	EPTDS	7/1/2007–6/31/2010.
8. 1,3-dinitrobenzene	99–65–0	EPA 529 [e]	0.76 µg/L	EPTDS	7/1/2007–6/31/2010.
9. 2,4,6-trinitrotoluene (TNT).	118–96–7	EPA 529 [e]	0.78 µg/L	EPTDS	7/1/2007–6/31/2010.
10. Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX).	121–82–4	EPA 529 [e]	1.2 µg/L	EPTDS	7/1/2007–6/31/2010.
11. Perchlorate	14797–73–0	EPA 314.0 [f, g]	0.57 µg/L	EPTDS	7/1/2007–6/31/2010.
		EPA 314.1 [h]		.	
		EPA 331.0 [i]		.	
		EPA 332.0 [j]		.	
LIST 2: SCREENING SURVEY CHEMICAL CONTAMINANTS **Acetanilide Pesticide Degradation Products**					
1. Acetochlor ESA	187022–11–3	EPA 535 [k]	1.4 µg/L	EPTDS	7/1/2007–6/31/2009.
2. Acetochlor OA	184992–44–4	EPA 535 [k]	1.5 µg/L	EPTDS	7/1/2007–6/31/2009.
3. Alachlor ESA	142363–53–9	EPA 535 [k]	1.0 µg/L	EPTDS	7/1/2007–6/31/2009.
4. Alachlor OA	171262–17–2	EPA 535 [k]	1.6 µg/L	EPTDS	7/1/2007–6/31/2009.
5. Metolaclor ESA	171118–09–5	EPA 535 [k]	1.1 µg/L	EPTDS	7/1/2007–6/31/2009.
6. Metolachlor OA	152019–73–3	EPA 535 [k]	1.5 µg/L	EPTDS	7/1/2007–6/31/2009.
Acetanilide Pesticide Parent Compounds					
7. Acetochlor	34256–82–1	EPA [l]	2.0 µg/L	EPTDS	7/1/2007–6/31/2009.
8. Alachlor	15972–60–8	EPA [l]	1.6 µg/L	EPTDS	7/1/2007–6/31/2009.
9. Metolachlor	51218–45–2	EPA [l]	1.0 µg/L	EPTDS	7/1/2007–6/31/2009.
Nitrosamines					
10. N-nitroso-diethylamine (NDEA).	55–18–5	EPA 521 [m]	0.0046 µg/L	DSMRT and EPTDS	7/1/2007–6/31/2009.

TABLE 1.—UCMR CONTAMINANT LIST—Continued

1—Contaminant	2—CAS registry number	3—Analytical methods [a]	4—Minimum reporting level [b]	5—Sampling location [c]	6—Period during which monitoring to be completed
11. N-nitroso-dimethylamine (NDMA).	62–75–9	EPA 521 [m]	0.0024 µg/L	DSMRT and EPTDS	7/1/2007–6/31/2009.
12. N-nitroso-di-n-butylamine (NDBA).	924–16–3	EPA 521 [m]	0.0035 µg/L	DSMRT and EPTDS	7/1/2007–6/31/2009.
13. N-nitroso-di-n-propylamine (NDPA).	621–64–7	EPA 521 [m]	0.0072 µg/L	DSMRT amd EPTDS	7/1/2007– 6/31/2009.
14. N-nitroso-methylethylamine (NMEA).	10595–95–6	EPA 521 [m]	0.0034 µg/L	DSMRT and EPTDS	7/1/2007–6/31/2009.
15. N-nitroso-pyrrolidine (NPYR).	930–55–2	EPA 521 [m]	0.0022 µg/L	DSMRT and EPTDS	7/1/2007–6/31/2009.
LIST 3: PRE-SCREEN TESTING TO BE SAMPLED AFTER NOTICE OF ANALYTICAL METHODS AVAILABILITY					
1. Reserved [n]	Reserved [n]	Reserved [n]	Reserved [n]	Reserved [n]	Reserved. [n]

Column headings are:
1—Contaminant: the name of the contaminant to be analyzed.
2—CAS (Chemical Abstract Service) Registry Number or Identification Number: a unique number identifying the chemical contaminants.
3—Analytical Methods: method numbers identifying the methods that must be used to test the contaminants.
4—Minimum Reporting Level: the value and unit of measure at or above which the concentration of the contaminant must be measured using the approved analytical methods.
5—Sampling Location: the locations within a PWS at which samples must be collected.
6—Period During Which Monitoring to Be Completed: the years during which the sampling and testing are to occur for the indicated contaminant.

The analytical procedures shall be performed in accordance with the documents associated with each method (per the following footnotes). The incorporation by reference of the following documents listed in footnotes d-m was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Information on how to obtain these documents can be provided by the Safe Drinking Water Hotline at (800) 426–4791. Documents may be inspected at EPA's Drinking Water Docket, 1301 Constitution Avenue, NW., EPA West, Room B102, Washington, DC 20460, Telephone: (202) 566–2426; or at the National Arcives and Records Administration (NARA). For information on 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.*

[a] The version of the EPA methods which you must follow for this Regulation are listed in d-m as follows.

[b] The Minimum Reporting Level (MRL) was established by EPA by adding the mean of the Lowest Concentration Minimum Reporting Levels (LCMRL) determined according to the procedure detailed in ''Statistical Protocol for the Determination of The Single-Laboratory Lowest Concentration Minimum Reporting Level (LCMRL) and Validation of the Minimum Reporting Level (MRL)'' by the primary and secondary laboratories conducting the development and validation of the analytical method to three times the difference of the LCMRLs. If LCMRL data from three or more laboratories were available, the MRL was established by EPA by adding three times the standard deviation of the LCMRLs to the mean of the LCMRLs. Note that EPA Methods 314.0 and 525.2 were developed prior to UCMR 2, hence the LCMRLs were not determined for analytes determined by these methods.

[c] Sampling must occur at entry points to the distribution system (EPTDSs) after treatment is applied that represent each non-emergency water source in routine use over the 12-month period of monitoring. See 40 CFR 141.35(c)(3) for an explanation of the requirements related to use of representative EPTDSs. Sampling for nitrosamines on List 2 must also occur at the disinfection byproduct distribution system maximum residence time (DSMRT) sampling locations as defined in 40 CFR 141.132(b)(1)(i) and at EPTDSs sampling locations. If a treatment plant/water source is not subject to the sampling required in 40 CFR 141.132(b)(1), then the samples for nitrosamines must be collected only at the EPTDS location.

EPA Method 527 [d] ''Determination of Selected Pesticides and Flame Retardants in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS)'' is available at *http://www.epa.gov/safewater/methods/sourcalt.html.*

EPA Method 529 [e] ''Determination of Explosives and Related Compounds in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography/Mass Spectrometry (GC/MS)'' is available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

EPA Method 314.0 [f] ''Determination of Perchlorate in Drinking Water Using Ion Chromatography'' is available at *http://www.epa.gov/safewater/methods/sourcalt.html.*

[g] All perchlorate samples must be collected using the sterile technique required in Methods 314.1, 331.0, or 332.0.

[h] EPA Method 314.1 ''Determination of Perchlorate in Drinking Water Using Inline Column Concentration/Matrix Elimination Ion Chromatography with Suppressed Conductivity Detection'' is available at *http://www.epa.gov/safewater/methods/sourcalt.html.*

[i] EPA Method 331.0 ''Determination of Perchlorate in Drinking Water by Liquid Chromatography Electrospray Ionization Mass Spectrometry'' is available at *http://www.epa.gov/safewater/methods/sourcalt.html.*

[j] EPA Method 332.0 ''Determination of Perchlorate in Drinking Water Using Ion Chromatography with Suppressed Conductivity and Electrospray Ionization Mass Spectrometry'' is available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

[k] EPA Method 535, Revision 1.1'' Measurement of Chloroacetanilide and Other Acetamide Herbicide Degradates in Drinking Water by Solid Phase Extraction and Liquid Chromatography/Tandem Mass Spectrometry (LC/MS/MS)'' is available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

[l] EPA Method 525.2 ''Determination of Organic Compounds in Drinking Water by Liquid-Solid Extraction and Capillary Column Gas Chromatography/Mass Spectrometry'' is available at *http://www.NEMI.gov.*

[m] EPA Method 521 ''EPA Method 521: Determination of Nitrosamines in Drinking Water by Solid Phase Extraction and Capillary Column Gas Chromatography with Large Volume Injection and Chemical Ionization Tandem Mass Spectrometry (MS/MS)'' is available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

[n] To be determined at a later time.

(4) *Sampling requirements*—

(i) *Large systems.* If you serve more than 10,000 people and meet the UCMR applicability criteria specified in paragraph (a)(2)(i) of this section, you must comply with the requirements specified in paragraphs (a)(4)(i)(A) through (I) of this section. Your samples must be collected according to the schedule that you are assigned by EPA or your State, or the schedule that you revised using EPA's electronic data reporting system on or before [DATE 210 DAYS AFTER PUBLICATION OF THE FINAL RULE]. Your schedule must

follow both the timing and frequency of monitoring specified in Tables 1 and 2 of this section.

(A) Monitoring period. You must collect the samples in one continuous 12-month period for List 1 Assessment Monitoring, and, if applicable, for List 2 Screening Survey, or List 3 Pre-Screen Testing, during the time frame indicated in column 6 of Table 1, in paragraph (a)(3) of this section. As specified in § 141.35(c)(5), you must contact EPA if you believe you cannot conduct monitoring according to your schedule.

(B) Frequency. You must collect the samples within the time frame and according to the frequency specified by contaminant type and water source type for each sampling location, as specified in Table 2, in paragraph (a)(4)(i)(B).

TABLE 2.—MONITORING FREQUENCY BY CONTAMINANT AND WATER SOURCE TYPES

Contaminant type	Water source type	Time frame (months)	Frequency
Chemical	Surface water or ground water under the direct influence of surface water (GWUDI) (includes all sampling locations for which some or all of the water comes from a surface water or GWUDI source).	12	You must monitor for 4 consecutive quarters. Sample events must occur 3 months apart.
	Ground water	12	You must monitor twice in a consecutive 12-month period. Sample events must occur 6 months apart.

(C) Location. You must collect samples for each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, as specified in Table 1, in paragraph (a)(3) of this section; samples must be collected at each sample point that is specified in column 5 of that table. If you are a ground water system with multiple EPTDSs, and you request and receive approval from EPA or the State for sampling at representative EPTDS(s), as specified in § 141.35(c)(3), you must collect your samples from the approved representative sampling location(s). Systems conducting Screening Survey monitoring must also sample for nitrosamines at the disinfection byproduct distribution system maximum residence time (DSMRT) sampling location(s) if they are subject to sampling requirements in § 141.132(b)(1).

(D) Sampling instructions. For each List 1 Assessment Monitoring contaminant, and, if applicable, for each List 2 Screening Survey, or List 3 Pre-Screen Testing contaminant, you must follow the sampling procedure for the method specified in column 3 of Table 1, in paragraph (a)(3) of this section. In addition, you must not composite (that is, combine, mix, or blend) the samples; you must collect, preserve, and test each sample separately. If you are using EPA Method 314.0 for analysis of perchlorate, you must collect the samples using the sterile techniques that are described in any 1 of the other 3 perchlorate methods, as specified in Table 1, in paragraph (a)(3) of this section.

(E) Sample collection and shipping time. If you must ship the samples for testing, you must collect the samples early enough in the day to allow adequate time to send the samples for overnight delivery to the laboratory. You should not collect samples on Friday, Saturday, or Sunday because sampling on these days may not allow samples to be shipped and received at the laboratory at the required temperature, unless you have made special arrangements with your laboratory to receive the samples.

(F) Analytical methods. For each contaminant, you must use the analytical methods for List 1, and, if applicable, for List 2, that are specified in column 3 of Table 1, in paragraph (a)(3) of this section; report values at or above the minimum reporting levels for List 1, and, if applicable, for List 2 Screening Survey, or List 3 Pre-Screen Testing, that are specified in column 4 of Table 1, in paragraph (a)(3) of this section; and conduct the quality control procedures specified in paragraph (a)(5) of this section.

(G) Laboratory errors or sampling deviations. If an error occurs either at the laboratory which precludes its reporting of valid data, or in sampling for a listed contaminant, you must resample within 14 days of observing the occurrence of the error using the procedures specified for the method. (This resampling is not for confirmation sampling, but to correct the sampling or laboratory error.)

(H) Analysis. For the List 1 contaminants, and, if applicable, List 2 Screening Survey, or List 3 Pre-Screen Testing contaminants, identified in Table 1, paragraph (a)(3) of this section, you must arrange for testing by a laboratory that has been approved by EPA according to requirements in paragraph (a)(5)(ii) of this section.

(I) Review and reporting of results. After you have received the laboratory results, you must review, approve, and submit the system information, and sample collection data and test results. You must report the results as provided in § 141.35(c)(6).

(ii) *Small systems.* If you serve 10,000 or fewer people and are notified that you are part of the State Monitoring Plan for Assessment Monitoring, Screening Survey or Pre-Screen monitoring, you must comply with the requirements specified in paragraphs (a)(4)(i)(A) through (H) of this section. If EPA or the State informs you that they will be collecting your UCMR samples, you must assist them in identifying the appropriate sampling locations and in taking the samples.

(A) Monitoring period and frequency. You must collect samples at the times specified for you by the State or EPA. Your schedule must follow both the timing of monitoring specified in Table 1, List 1, and, if applicable, List 2, and the frequency of monitoring in Table 2 of this section.

(B) Location. You must collect samples at the locations specified for you by the State or EPA.

(C) Sample kits. You must store and maintain the sample collection kits sent to you by the UCMR Sampling Coordinator in accordance with the kit's instructions. The sample kit will include all necessary containers, packing materials and cold packs, instructions for collecting the sample and sample treatment (such as dechlorination or preservation), report forms for each sample, contact name and telephone number for the laboratory, and a prepaid return shipping docket and return address label. If any of the materials listed in the kit's instructions are not included in the kit or arrive damaged, you must notify

the UCMR Sampling Coordinator who sent you the sample collection kits.

(D) Sampling instructions. You must comply with the instructions sent to you by the State or EPA concerning the use of containers, collection (how to fill the sample bottle), dechlorination and/or preservation, and sealing and preparation of sample and shipping containers for shipment. You must not composite (that is, combine, mix, or blend) the samples. You also must collect, preserve, and test each sample separately. You must also comply with the instructions sent to you by the UCMR Sampling Coordinator concerning the handling of sample containers for specific contaminants.

(E) Sampling deviations. If you do not collect a sample according to the instructions provided to you for a listed contaminant, you must report the deviation within 7 days of the scheduled monitoring on the sample reporting form, as specified in § 141.35(d)(2). A copy of the form must be sent to the laboratory with the samples, and to the UCMR Sampling Coordinator. You must resample following instructions that you will be sent from the UCMR Sampling Coordinator or State.

(F) Duplicate samples. EPA will select systems in the State Monitoring Plan that must collect duplicate samples for quality control. If your system is selected, you will receive two sample kits for an individual sampling location that you must use. You must use the same sampling protocols for both sets of samples, following the instructions in the duplicate sample kit.

(G) Sampling forms. You must completely fill out each of the sampling forms and bottles sent to you by the UCMR Sampling Coordinator, including data elements listed in § 141.35(e) for each sample. If you are conducting Assessment Monitoring, you must include elements 1 through 5, and 7; and if you are conducting Screening Survey, you must include elements 1 through 7. You must sign and date the sampling forms.

(H) Sample collection and shipping. You must collect the samples early enough in the day to allow adequate time to send the samples for overnight delivery to the laboratory. You should not collect samples on Friday, Saturday, or Sunday because sampling on these days may not allow samples to be shipped and received at the laboratory at the required temperature unless you have made special arrangements with EPA for the laboratory to receive the samples. Once you have collected the samples and completely filled in the sampling forms, you must send the samples and the sampling forms to the laboratory designated on the air bill.

(5) *Quality control requirements.* If your system serves more than 10,000 people, you must ensure that the quality control requirements listed below are met during your sampling procedures and by the laboratory conducting your analyses. You must also ensure that all method quality control procedures and all UCMR quality control procedures are followed.

(i) *Sample collection/preservation.* You must follow the sample collection and preservation requirements for the specified method for each of the contaminants in Table 1, in paragraph (a)(3) of this section. If you are using EPA Method 314.0 for analysis of perchlorate, you must collect the samples using the sterile techniques that are described in any 1 of the other 3 perchlorate methods, as specified in Table 1, in paragraph (a)(3) of this section. These requirements specify sample containers, collection, dechlorination, preservation, storage, sample holding time, and extract storage and/or holding time that you must assure that the laboratory follow.

(ii) *Laboratory approval for Lists 1 and 2.* To be approved to conduct UCMR testing, the laboratory must be certified under § 141.28 for one or more compliance analyses; demonstrate for each analytical method it plans to use for UCMR testing that it can meet the Initial Demonstration of Capability (IDC) requirements specified in column 3 of Table 1, in paragraph (a)(3) of this section; and successfully participate in the UCMR Proficiency Testing (PT) Program administered by EPA for each analytical method it plans to use for UCMR testing. UCMR laboratory approval decisions will be granted on an individual method basis for the methods listed in column 3 of Table 1 in paragraph (a)(3) of this section for List 1, List 2, and List 3 contaminants. Laboratory approval is contingent upon the capability of the laboratory to post monitoring data to the EPA electronic data reporting system. To participate in the UCMR Laboratory Approval Program, the laboratory must complete and submit the necessary registration forms by [INSERT DATE 90 DAYS AFTER PUBLICATION OF THE FINAL RULE]. Correspondence must be addressed to: UCMR 2 Laboratory Approval Coordinator, USEPA, Technical Support Center, 26 West Martin Luther King Drive (MS 140), Cincinnati, OH 45268; or e-mailed to EPA at *UCMR_Sampling_Coordinator@epa.gov*.

(iii) *Minimum Reporting Level.* The Minimum Reporting Level (MRL) is the lowest analyte concentration for which future recovery is predicted to fall, with high confidence (99%), between 50% and 150% recovery.

(A) Validation of laboratory performance. Your laboratory must be capable of quantifying each contaminant listed in Table 1, at or below the MRL specified in column 4 of Table 1, in paragraph (a)(3) of this section. You must ensure that the laboratory completes and has on file and available for your inspection, records of two distinct procedures. First, your laboratory must have conducted an IDC involving replicate analyses at or below the MRL as described in this paragraph. Second, for each day that UCMR analyses are conducted by your laboratory, a validation of its ability to quantify each contaminant, at or below the MRL specified in column 4 of Table 1, in paragraph (a)(3) of this section, following the procedure listed in paragraph (a)(5)(iii)(B) of this section, must be performed. The procedure for validation of laboratory performance at or below the MRL is as follows:

(1) All laboratories using EPA drinking water methods under UCMR must demonstrate that they are capable of meeting data quality objectives (DQOs) at or below the MRL listed in Table 1, column 4, in paragraph (a)(3) of this section.

(2) The MRL, or any concentration below the MRL, at which performance is being evaluated, must be contained within the range of calibration. The calibration curve regression model and the range of calibration levels that is used in these performance validation steps must be used in all routine sample analyses used to comply with this regulation. Only straight line or quadratic regression models are allowed. The use of either weighted or unweighted models is permitted. The use of cubic regression models are not permitted.

(3) Replicate analyses of at least seven (7) fortified samples in reagent water must be performed at or below the MRL for each analyte, and must be processed through the entire method procedure (*i.e.*, including extraction, where applicable and with all preservatives).

(4) A prediction interval of results (PIR), which is based on the estimated arithmetic mean of analytical results and the estimated sample standard deviation of measurement results, must be determined by Equation 1:

$$PIR = Mean \pm s \times t_{(df,1-\alpha/2)} \times \sqrt{1+\frac{1}{n}} \qquad \text{Equation 1}$$

Where:

t is the Student's t value with df degrees of freedom and confidence level (1-*a*),

s is the sample standard deviation of n replicate samples fortified at the MRL,

n is the number of replicates.

(5) The values needed to calculate the PIR using Equation 1 are: number of replicates (n); Student's t value with a two-sided 99% confidence level for n number of replicates; the average (mean) of at least seven replicates; and the sample standard deviation. Factor 1 is referred to as the Half Range PIR (HR_{PIR}). For a certain number of replicates and for a certain confidence level in Student's t, this factor is constant, and can be tabulated according to replicate number and confidence level for the Student's t. Table 3 in this paragraph lists the constant factor (C) for replicate sample numbers 7 through 10 with a confidence level of 99% for Student's t.

$$T\ s \times t_{(df,1-\alpha/2)} \times \sqrt{1+\frac{1}{n}} \qquad \text{Factor 1}$$

(6) The HR_{PIR} is calculated by Equation 2:

$$HR_{PIR} = s \times C \qquad \text{Equation 2}$$

(7) The PIR is calculated by Equation 3:

$$PIR = Mean \pm HR_{PIR} \qquad \text{Equation 3}$$

TABLE 3.—THE CONSTANT FACTOR (C) TO BE MULTIPLIED BY THE STANDARD DEVIATION TO DETERMINE THE HALF RANGE INTERVAL OF THE PIR

[Student's *t* 99% confidence level][1]

Replicates	Degrees of freedom	Constant factor (C) to be multiplied by the standard deviation
7	6	3.963
8	7	3.711
9	8	3.536
10	9	3.409

[1] The critical t-value for a two-sided 99% confidence interval is equivalent to the critical t-value for a one-sided 99.5% confidence interval, due to the symmetry of the t-distribution. PIR = Prediction Interval of Results.

(8) The lower and upper result limits of the PIR must be converted to percent recovery of the concentration being tested. To pass criteria at a certain level, the PIR lower recovery limits cannot be lower than the lower recovery limits of the quality control (QC) interval (50%), and the PIR upper recovery limits cannot be greater than the upper recovery limits of the QC interval (150%). When the PIR recovery limits fall outside of either bound of the QC interval of recovery (higher than 150% or less than 50%), laboratory performance is not validated at the concentration evaluated. If the PIR limits are contained within both bounds of the QC interval, laboratory performance is validated for that analyte.

(B) Quality control requirements for validation of laboratory performance at or below the MRL.

(1) You must ensure that the calibration curve regression model and that the range of calibration levels that are used in these performance validation steps are used in future routine sample analysis. Only straight line or quadratic regression models are allowed.

(2) You must ensure, once your laboratory has performed an IDC as specified in each analytical method (demonstrating that DQOs are met at or below an MRL), that a daily performance check is performed for each analyte and method. A single sample, spiked at or below the MRL for each analyte, must be processed through the entire method procedure. The measured concentration for each analyte must be converted to a percent recovery, and if the recovery is within 50%–150% (inclusive), the daily performance of the laboratory has been validated. The results for any analyte for which 50%–150% recovery cannot be demonstrated during the daily check are not valid. Laboratories may elect to re-run the daily performance check sample if the performance for any analyte or analytes cannot be validated. If performance is validated for these analytes, then the laboratory performance is considered validated. Alternatively, the laboratory may re-calibrate and repeat the performance validation process for all analytes. Laboratories performing perchlorate analyses using EPA Method 314.0 must, in addition to the quality control specified in that method, successfully monitor the Laboratory Synthetic Sample Matrix Blank and the MRL Laboratory Fortified Synthetic Sample Matrix, as specified in Section 9.3.2 and 9.3.4 of EPA Method 314.1, prior to analysis of samples. The MRL Laboratory Fortified Synthetic Sample Matrix is intended as a daily MRL check and only must be run once per analysis batch.

(iv) *Laboratory fortified sample matrix and laboratory fortified sample matrix duplicate.* You must ensure that your laboratory prepares and analyzes the Laboratory Fortified Sample Matrix (LFSM) sample for accuracy and Laboratory Fortified Sample Matrix Duplicate (LFSMD) samples for precision to determine method accuracy and precision for all contaminants in Table 1, in paragraph (a)(3) of this section. LFSM/LFSMD samples must be prepared using a sample collected and analyzed in accordance with UCMR 2 requirements and analyzed at a

frequency of 5% (or 1 LFSM/LFSMD set per every 20 samples) or with each sample batch, whichever is more frequent. In addition, the LFSM/LFSMD fortification concentrations must be alternated between a low-level fortification and mid-level fortification approximately 50% of the time. (For example: a set of 40 samples will require preparation and analysis of 2 LFSM/LFSMD sets. The first set must be fortified at either the low-level or mid-level, and the second set must be fortified with the other standard, either the low-level or mid-level, whichever was not used for the initial LFSM/LFSMD set.) The low-level LFSM/LFSMD fortification concentration must be within ±20% of the MRL for each contaminant (*e.g.*, for an MRL of 1.0 µg/L the acceptable fortification levels must be between 0.80 µg/L and 1.2 µg/L). The mid-level LFSM/LFSMD fortification concentration must be within ±20% of the mid-level calibration standard for each contaminant, and should represent, where possible and where the laboratory has data from previously analyzed samples, an approximate average concentration observed in previous analyses of that analyte. There are no acceptance criteria specified for LFSM/LFSMD analyses. All LFSM/LFSMD data are to be reported.

(v) *Detection Confirmation.* Results greater than or equal to the MRLs specified in column 4 of Table 1 in paragraph (a)(3) of this section, that are obtained using Methods 314.0 or 314.1, must be confirmed before being reported. Results using these methods must be confirmed by Methods 331.0 or 332.0 or by second column confirmation as detailed in Method 314.1. If confirmation is being performed using the second column specified in Method 314.1, the laboratory must use one of the following confirming techniques: perform single point calibration of the second chromatographic column for confirmation purposes only as long as the calibration standard is at a concentration within ±50% of the concentration determined by the initial analysis; or perform a three (3) point calibration with single point daily calibration verification of the second chromatographic column regardless of whether that verification standard concentration is within ±50% of sample response. However, this calibration must bracket the concentration of the contaminant observed. The concentration obtained for the primary column must be reported; if the concentration observed on the primary column is within 2 times the MRL and the quantitation of both columns is within ±50%, or if the concentration observed on the primary column is greater than 2 times the MRL and the quantitation of both columns is within ±30%. If the quantitation obtained from both columns is not within ±50% and the concentration observed on the primary column is within 2 times the MRL, or if the quantitation obtained from both columns is not within ±30% and the concentration observed on the primary column greater than 2 times the MRL, the result is to be reported as ''not reported due to matrix interference,'' as specified in Table 1, in § 141.35(e). If confirmation is being performed using either Method 331.0 or 332.0, then the laboratory must report the Method 331.0 or 332.0 result.

(vi) *Method defined quality control.* You must ensure that your laboratory performs Laboratory Fortified Blanks and Laboratory Performance Checks, as appropriate to the method's requirements, for those methods listed in Table 1, column 3, in paragraph (a)(3) of this section. Each method specifies acceptance criteria for these QC checks.

(vii) *Reporting.* You must ensure that the laboratory you use reports the analytical results and other data, with the required data listed in Table 1, in § 141.35(e). You must require your laboratory to submit these data electronically to the State and EPA using EPA's electronic data reporting system (*http://www.epa.gov/safewater/ucmr/ucmr2/reporting.html*) within 120 days from the sample collection date. You have 60 days from when the laboratory posts the data to then review, approve, and submit the data to the State and EPA, via EPA's electronic data reporting system. If you do not electronically approve and submit the laboratory data to EPA within 60 days of the laboratory's posting to EPA's electronic reporting system, the data will be considered approved and final for EPA review.

(6) *Violation of this rule—*

(i) *Monitoring violations.* Any failure to monitor in accordance with § 141.40(a)(3)–(5) is a monitoring violation.

(ii) *Reporting violations.* Any failure to report in accordance with § 141.35 is a reporting violation.

(b) *Requirements for State and Tribal participation—*

(1) *Governors' petition for additional contaminants.* The Safe Drinking Water Act allows Governors of seven (7) or more States to petition the EPA Administrator to add one or more contaminants to the UCMR Contaminant List in paragraph (a)(3) of this section. The petition must clearly identify the reason(s) for adding the contaminant(s) to the monitoring list, including the potential risk to public health, particularly any information that might be available regarding disproportional risks to the health and safety of children, the expected occurrence documented by any available data, any analytical methods known or proposed to be used to test for the contaminant(s), and any other information that could assist the Administrator in determining which contaminants present the greatest public health concern and should, therefore, be included on the UCMR Contaminant List in paragraph (a)(3) of this section.

(2) *State-wide waivers.* You can waive monitoring requirements only with EPA approval and under very limited conditions. Conditions and procedures for obtaining a waiver are as follows:

(i) *Application.* You may apply to EPA for a State-wide waiver from the unregulated contaminant monitoring requirements for PWSs serving more than 10,000 people. To apply for such a waiver, you must submit an application to EPA that includes the following information: the list of contaminants on the UCMR Contaminant List for which you request a waiver, along with documentation for each contaminant in your request demonstrating that the contaminants or their parent compounds do not occur naturally in your State, and certifying that during the past 15 years they have not been used, applied, stored, disposed of, released, or detected in the source waters or distribution systems in your State.

(ii) *Approval.* EPA will review your application and notify you whether it accepts or rejects your request. You must receive written approval from EPA before issuing a State-wide waiver.

[FR Doc. 05–16385 Filed 8–19–05; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
August 22, 2005

Part V

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4889–N–05]

Statutorily Mandated Designation of Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates ''Difficult Development Areas'' (DDAs) for purposes of the Low-Income Housing Tax Credit (LIHTC) under Section 42 of the Internal Revenue Code of 1986 (the Code) (26 U.S.C. 42). The United States Department of Housing and Urban Development (HUD) makes new Difficult Development Area designations annually. The designations of ''Qualified Census Tracts'' (QCTs) under Section 42 of the Internal Revenue Code published December 12, 2002, as supplemented on December 19, 2003, remain in effect.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions, contact Kurt G. Usowski, Associate Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–6000, telephone (202) 708–2770, or send e-mail to *Alastair_McFarlane@hud.gov*. For specific legal questions pertaining to Section 42, contact Branch 5, Office of the Associate Chief Counsel, Passthroughs & Special Industries, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone (202) 622–3040, fax (202) 622–4524. For questions about the ''HUB Zones'' program, contact Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Small Business Administration, 409 Third Street, SW., Suite 8800, Washington, DC 20416, telephone (202) 205–8885, fax (202) 205–7167, or send e-mail to *hubzone@sba.gov*. A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice and additional information about DDAs and QCTs are available electronically on the Internet at *http://www.huduser.org/datasets/qct.html*.

SUPPLEMENTARY INFORMATION:

This Document

This notice designates DDAs for each of the 50 states, the District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands. The designations of DDAs in this notice are based on final Fiscal Year (FY) 2005 Fair Market Rents (FMRs), 2005 income limits, and 2000 Census population counts as explained below. The designations of QCTs under Section 42 of the Internal Revenue Code published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), remain in effect.

2000 Census

Data from the 2000 Census on total population of metropolitan areas and nonmetropolitan areas are used in the designation of DDAs. The Office of Management and Budget (OMB) published new metropolitan area definitions incorporating 2000 Census data in OMB Bulletin No. 03–04 on June 6, 2003, as updated in OMB Bulletin No. 04–03 on February 18, 2004, and OMB Bulletin No. 05–02 on February 22, 2005. The FY2005 FMRs and 2005 income limits used to designate Difficult Development Areas are based on the Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions established by OMB in OMB Bulletin No. 99–04 on June 30, 1999. Therefore, for the purposes of designating DDAs, ''metropolitan areas'' will continue to be defined according to the MSA/PMSA definitions established in OMB Bulletin No. 99–04 on June 30, 1999, until further notice.

Background

The U.S. Department of the Treasury (Treasury) and its Internal Revenue Service (IRS) are authorized to interpret and enforce the provisions of the Code, including the LIHTC found at Section 42 of the Code. The Secretary of HUD is required to designate DDAs and QCTs by Section 42(d)(5)(C) of the Code. In order to assist in understanding HUD's mandated designation of DDAs and QCTs for use in administering Section 42, a summary of the section is provided. The following summary does not purport to bind Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has authority to interpret or administer the Code only in instances where it receives explicit delegation.

Summary of Low-Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low-income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (credit ceiling) is limited by population. Each state is allowed a credit ceiling based on a statutory formula indicated at Section 42(h)(3). States may carry forward unallocated credits derived from the credit ceiling for one year; however, to the extent these unallocated credits are not used by then, the credits go into a national pool to be redistributed to states as additional credit. State and local housing agencies allocate the state's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, states may also provide Section 42 credits to owners of buildings based on the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond ''volume cap'' do not reduce the credits available from the credit ceiling.

The credits allocated to a building are based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: Either 20 percent of the units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the area median gross income (AMGI) or 40 percent of the units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term ''rent-restricted'' means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (*i.e.*, 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low-income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either: (1) 70 percent of the ''qualified basis'' for new construction or substantial rehabilitation expenditures that are not federally subsidized (*i.e.*, financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing buildings or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in Section 42. Individuals can use the

credits up to a deduction equivalent of $25,000 (the actual maximum amount of credit that an individual can claim depends on the individual's marginal tax rate). Individuals cannot use the credits against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credits against ordinary income tax. They cannot use the credits against the alternative minimum tax. These corporations can also deduct losses from the project.

The qualified basis represents the product of the building's ''applicable fraction'' and its ''eligible basis.'' The applicable fraction is based on the number of low-income units in the building as a percentage of the total number of units, or based on the floor space of low income-units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to a capital account that are incurred prior to the end of the first taxable year in which the qualified low-income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated DDAs or designated QCTs, eligible basis can be increased by up to 130 percent from what it would otherwise be. This means that the available credits also can be increased by up to 30 percent. For example, if a 70 percent credit is available, it effectively could be increased to as much as 91 percent.

Section 42 of the Code defines a DDA as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. All designated DDAs in metropolitan areas (taken together) may not contain more than 20 percent of the aggregate population of all metropolitan areas, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all nonmetropolitan areas.

Explanation of HUD Designation Methodology

A. Difficult Development Areas

In developing the list of DDAs, HUD compared housing costs with incomes. HUD used 2000 Census population data and the metropolitan area (MSA/PMSA) definitions as published in OMB Bulletin No. 99–04 on June 30, 1999. In keeping with past practice of basing the coming year's DDA designations on data from the preceding year, the basis for these comparisons was the 2005 HUD income limits for Very Low-Income households (Very Low Income Limits, or VLILs) and final FY2005 FMRs used for the Section 8 Housing Choice Voucher program. The procedure used in making the DDA calculations follows:

1. For each MSA/PMSA and each nonmetropolitan area, a ratio was calculated. This calculation used the final FY2005 two-bedroom FMR and the 2005 four-person VLIL.

a. The numerator of the ratio was the area's final FY2005 FMR. In general, the FMR is based on the 40th percentile rent paid by recent movers for a two-bedroom apartment. In metropolitan areas granted a FMR based on the 50th percentile rent for purposes of improving the administration of HUD's Housing Choice Voucher program (see 66 FR 162), the 40th percentile rent was used for nationwide consistency of comparisons.

b. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as ½ of 30 percent of 120 percent of the area's VLIL (where the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for nonmetropolitan areas.

3. The DDAs are those with the highest ratios cumulative to 20 percent of the 2000 population of all metropolitan areas and of all nonmetropolitan areas, respectively.

B. Application of Population Caps to Difficult Development Area Determinations

In identifying DDAs, HUD applied caps, or limitations, as noted above. The cumulative population of metropolitan DDAs cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan DDAs cannot exceed 20 percent of the cumulative population of all nonmetropolitan areas.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, *and* its inclusion resulted in only a minor overrun of the cap. Thus, for both the designated metropolitan and nonmetropolitan DDAs, there may be minimal overruns of the cap. HUD believes the designation of these additional areas is consistent with the intent of the legislation. As long as the apparent excess is small due to measurement errors, some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded. Despite the care and effort involved in a decennial census, the Census Bureau and all users of the data recognize that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting small variances above the 20 percent limit.

C. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> ''OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * * OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions * * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.''

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating DDAs.

Metropolitan Area and Counties Deleted

Chicago, Illinois: DeKalb, Grundy, and Kendall Counties.

Cincinnati-Hamilton, Ohio-Kentucky-Indiana: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, Texas: Henderson County.

Flagstaff, Arizona-Utah: Kane County, Utah.
New Orleans, Louisiana: St. James Parish.
Washington, DC-Maryland-Virginia-West Virginia: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator ''(part)'' in the list of Metropolitan DDAs. Any of the excluded counties designated as DDAs separately from their metropolitan areas are designated by the county name.

In the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), OMB defined MSAs/PMSAs according to county subdivisions or minor civil divisions (MCDs), rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan DDA, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan DDA. Affected counties are assigned the indicator ''(part)'' in the list of Nonmetropolitan DDAs.

For the convenience of readers of this notice, the geographical definitions of designated Metropolitan DDAs and the MCDs included in partial-county Nonmetropolitan DDAs in the New England states are included in the list of DDAs.

Future Designations

DDAs are designated annually as updated income and FMR data become available.

Effective Date

The 2006 lists of DDAs are effective: (1) For allocations of credit after December 31, 2005; or (2) for purposes of Section 42(h)(4)(B) of the Code, if the bonds are issued and the building is placed in service after December 31, 2005. If an area is not on a subsequent list of DDAs, the 2006 lists are effective for the area if (1) the allocation of credit to an applicant is made no later than the end of the 365-day period after the submission to the credit-allocating agency of a complete application by the applicant, and the submission is made before the effective date of the subsequent lists; or (2) for purposes of Section 42(h)(4)(B) of the Code, the bonds are issued or the building is placed in service no later than the end of the 365-day period after the applicant submits a complete application to the bond-issuing agency, and the submission is made before the effective date of the subsequent lists, provided that both the issuance of the bonds and the placement in service of the building occur after the application is submitted.

An application is deemed to be submitted on the date it is filed if the application is determined to be complete as certified in writing by the credit-allocating agency or bond-issuing agency. A ''complete application'' means that no more than *de minimis* clarification of the application is required for the agency to make a decision about the allocation of tax credits or issuance of bonds requested in the application.

The designations of QCTs under Section 42 of the Internal Revenue Code published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), remain in effect. The above language regarding calendar year 2006 and subsequent designations of DDAs also applies to the designations of QCTs published December 12, 2002 (67 FR 76451), as supplemented on December 19, 2003 (68 FR 70982), and subsequent designations of QCTs.

Interpretive Examples of Effective Date

For the convenience of readers of this notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose DDA status. The examples are equally applicable to future QCT designations.

(Case A) Project ''A'' is located in a 2006 DDA that is NOT a designated DDA in 2007. An application for tax credits for Project ''A'' is filed with the allocating agency November 15, 2006, which the credit-allocating agency certifies in writing as complete. Credits are allocated to Project ''A'' on October 30, 2007. Project ''A'' IS eligible for the increase in basis accorded a project in a 2006 DDA because the application was filed BEFORE January 1, 2007 (the assumed effective date for the 2007 DDA lists), and tax credits were allocated no later than the end of the 365-day period after the filing of the complete application for an allocation of tax credits.

(Case B) Project ''B'' is located in a 2006 DDA that is NOT a designated DDA in 2007. An application for tax credits for Project ''B'' is filed with the allocating agency December 1, 2006, which the credit-allocating agency certifies in writing as complete. Credits are allocated to Project ''B'' on March 30, 2008. Project ''B'' IS NOT eligible for the increase in basis accorded a project in a 2006 DDA because, although the application for an allocation of tax credits was filed BEFORE January 1, 2007 (the assumed effective date of the 2007 DDA lists), the tax credits were allocated later than the end of the 365-day period after the filing of the complete application.

(Case C) Project ''C'' is located in a 2006 DDA that was not a DDA in 2005. Project ''C'' was placed in service November 15, 2005. An application for tax-exempt bond financing for Project ''C'' is filed with the bond-issuing agency on January 15, 2006, which the bond-issuing agency certifies in writing as complete. The bonds that will support the permanent financing of Project ''C'' are issued September 30, 2006. Project ''C'' IS NOT eligible for the increase in basis otherwise accorded a project in a 2006 DDA because the project was placed in service BEFORE January 1, 2006.

(Case D) Project ''D'' is located in an area that is a DDA in 2006, but IS NOT a DDA in 2007. An application for tax-exempt bond financing for Project ''D'' is filed with the bond-issuing agency on October 30, 2006, which the bond-issuing agency certifies in writing as complete. Bonds are issued for Project ''D'' on April 30, 2007, but Project ''D'' is not placed in service until January 30, 2008. Project ''D'' is eligible for the increase in basis available to projects located in 2006 DDAs because the first of the two events necessary for triggering the effective date for buildings described in Section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on April 30, 2007, within the 365-day period after a complete application for tax-exempt bond financing was filed, and the application was filed during a time when the location of Project ''D'' was in a DDA.

Findings and Certifications

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(6) of HUD's regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no Finding of No Significant Impact is required.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any policy document that has federalism implications if the

document either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the document preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the executive order. This notice merely designates ''Difficult Development Areas'' and ''Qualified Census Tracts'' as required under Section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the states in allocating the Low-Income Housing Tax Credit. This notice also details the technical methodology used in making such designations. As a result, this notice is not subject to review under the order.

Dated: August 12, 2005.

Roy A. Bernardi,

Deputy Secretary.

BILLING CODE 4210–62–P

2006 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Arizona	**Flagstaff, AZ-UT MSA (part)**	Coconino County			
	Las Vegas, NV-AZ MSA	Mohave County			
	Yuma, AZ MSA	Yuma County			
California	**Los Angeles-Long Beach, CA PMSA**	Los Angeles County			
	Oakland, CA PMSA	Alameda County	Contra Costa County		
	Orange County, CA PMSA	Orange County			
	Sacramento, CA PMSA	El Dorado County	Placer County	Sacramento County	
	Salinas, CA MSA	Monterey County			
	San Diego, CA MSA	San Diego County			
	San Luis Obispo-Atascadero-Paso Robles, CA MSA	San Luis Obispo County			
	Santa Barbara-Santa Maria-Lompoc, CA MSA	Santa Barbara County			
	Santa Cruz-Watsonville, CA PMSA	Santa Cruz County			
	Santa Rosa, CA PMSA	Sonoma County			
	Ventura, CA PMSA	Ventura County			
Florida	**Fort Lauderdale, FL PMSA**	Broward County			
	Miami, FL PMSA	Miami-Dade County			
	Orlando, FL MSA	Lake County	Orange County	Osceola County	Seminole County
	Tampa-St. Petersburg-Clearwater, FL MSA	Hernando County	Hillsborough County	Pasco County	Pinellas County
Hawaii	**Honolulu, HI MSA**	Honolulu County			

2006 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts	**Boston, MA-NH PMSA**	Acton town	Amesbury town	Arlington town	Ashland town
		Ayer town	Bedford town	Bellingham town	Belmont town
		Berkley town	Berlin town	Beverly city	Blackstone town
		Bolton town	Boston city	Boxborough town	Braintree town
		Brookline town	Burlington town	Cambridge city	Canton town
		Carlisle town	Carver town	Chelsea city	Cohasset town
		Concord town	Danvers town	Dedham town	Dighton town
		Dover town	Duxbury town	Essex town	Everett city
		Foxborough town	Framingham town	Franklin city	Gloucester city
		Hamilton town	Hanover town	Harvard town	Hingham town
		Holbrook town	Holliston town	Hopedale town	Hopkinton town
		Hudson town	Hull town	Ipswich town	Kingston town
		Lancaster town	Lexington town	Lincoln town	Littleton town
		Lynn city	Lynnfield town	Malden city	Manchester-by-the-Sea town
		Mansfield town	Marblehead town	Marlborough city	Marshfield town
		Maynard town	Medfield town	Medford city	Medway town
		Melrose city	Mendon town	Middleton town	Milford town
		Millis town	Millville town	Milton town	Nahant town
		Natick town	Needham town	Newbury town	Newburyport city
		Newton city	Norfolk town	North Reading town	Norton town
		Norwell town	Norwood town	Peabody city	Pembroke town
		Plainville town	Plymouth town	Quincy city	Randolph town
		Reading town	Revere city	Rockland town	Rockport town
		Rowley town	Salem city	Salisbury town	Saugus town
		Scituate town	Sharon town	Sherborn town	Shirley town
		Somerville city	Southborough town	Stoneham town	Stoughton town
		Stow town	Sudbury town	Swampscott town	Taunton city
		Topsfield town	Townsend town	Upton town	Wakefield town
		Walpole town	Waltham city	Wareham town	Watertown city
		Wayland town	Wellesley town	Wenham town	Weston town
		Westwood town	Weymouth town	Wilmington town	Winchester town
		Winthrop town	Woburn city	Wrentham town	

2006 IRS SECTION 42(d)(5)(C) METROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Metropolitan Area	Metropolitan Area Components			
Massachusetts (continued)	**Brockton, MA PMSA**	Abington town	Avon town	Bridgewater town	Brockton city
		East Bridgewater town	Easton town	Halifax town	Hanson town
		Lakeville town	Middleborough town	Plympton town	Raynham town
		West Bridgewater town	Whitman town		
Nevada	**Las Vegas, NV-AZ MSA**	Clark County	Nye County		
New Hampshire	**Boston, MA-NH PMSA**	Seabrook town	South Hampton town		
New Jersey	**Jersey City, NJ PMSA**	Hudson County			
	Vineland-Millville-Bridgeton, NJ PMSA	Cumberland County			
New York	**New York, NY PMSA**	Bronx County	Kings County	New York County	Putnam County
		Queens County	Richmond County	Rockland County	Westchester County
Puerto Rico	**Aguadilla, PR MSA**	Aguada Municipio	Aguadilla Municipio	Moca Municipio	
	Caguas, PR PMSA	Caguas Municipio	Cayey Municipio	Cidra Municipio	Gurabo Municipio
		San Lorenzo Municipio			
	Mayaguez, PR MSA	Anasco Municipio	Cabo Rojo Municipio	Hormigueros Municipio	Mayaguez Municipio
		Sabana Grande Municipio	San German Municipio		

2006 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Alaska	Aleutians East Borough	Aleutians West Census Area	Bethel Census Area	Bristol Bay Borough
	Dillingham Census Area	Fairbanks North Star Borough	Haines Borough	Juneau City and Borough
	Ketchikan Gateway Borough	Kodiak Island Borough	Lake and Peninsula Borough	Nome Census Area
	North Slope Borough	Northwest Arctic Borough	Prince of Wales-Outer Ketchikan Census Area	Sitka City and Borough
	Skagway-Hoonah-Angoon Census Area	Southeast Fairbanks Census Area	Valdez-Cordova Census Area	Wade Hampton Census Area
	Wrangell-Petersburg Census Area	Yakutat City and Borough	Yukon-Koyukuk Census Area	
Arizona	Apache County	Cochise County	Gila County	Graham County
	Greenlee County	La Paz County	Navajo County	Santa Cruz County
	Yavapai County			
Arkansas	Baxter County	Carroll County	Cleburne County	Drew County
	Garland County	Lafayette County	Mississippi County	Montgomery County
	Nevada County	Pike County		
California	Amador County	Colusa County	Del Norte County	Humboldt County
	Imperial County	Kings County	Lake County	Lassen County
	Mariposa County	Mendocino County	Modoc County	Mono County
	Nevada County	Plumas County	San Benito County	Sierra County
	Siskiyou County	Tehama County	Trinity County	Tuolumne County
Colorado	Archuleta County	Clear Creek County	Custer County	Dolores County
	Eagle County	Garfield County	Hinsdale County	Jackson County
	La Plata County	Lake County	Mineral County	Ouray County
	Park County	Pitkin County	Rio Blanco County	Routt County
	San Juan County	San Miguel County	Summit County	Teller County
Florida	Citrus County	Glades County	Hendry County	Highlands County
	Indian River County	Monroe County	Okeechobee County	Walton County
Georgia	Hall County			
Hawaii	Hawaii County	Kalawao County	Kauai County	Maui County
Idaho	Benewah County	Bonner County	Boundary County	Camas County
	Cassia County	Gem County	Gooding County	Idaho County
	Jerome County	Kootenai County	Lincoln County	Twin Falls County
Kentucky	Butler County	Carlisle County	Fulton County	McLean County
	Montgomery County	Nicholas County	Owen County	Powell County
	Simpson County			

2006 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Louisiana	Natchitoches Parish	Tangipahoa Parish		
Maine	CUMBERLAND COUNTY (part) towns of	Baldwin town	Bridgton town	Brunswick town
	Harpswell town	Harrison town	Naples town	New Gloucester town
	Pownal town	Sebago town		
	Hancock County	Knox County	Lincoln County	Piscataquis County
	Sagadahoc County			
	WALDO COUNTY (part) towns of	Belfast city	Belmont town	Brooks town
	Burnham town	Frankfort town	Freedom town	Islesboro town
	Jackson town	Knox town	Liberty town	Lincolnville town
	Monroe town	Montville town	Morrill town	Northport town
	Palermo town	Prospect town	Searsmont town	Searsport town
	Stockton Springs town	Swanville town	Thorndike town	Troy town
	Unity town	Waldo town		
	YORK COUNTY (part) towns of	Acton town	Alfred town	Arundel town
	Biddeford city	Cornish town	Dayton town	Kennebunk town
	Kennebunkport town	Lebanon town	Limerick town	Lyman town
	Newfield town	North Berwick town	Ogunquit town	Parsonsfield town
	Saco city	Sanford town	Shapleigh town	Waterboro town
	Wells town			
Massachusetts	BARNSTABLE COUNTY (part) towns of	Bourne town	Falmouth town	Provincetown town
	Truro town	Wellfleet town		
	Dukes County			
	HAMPSHIRE COUNTY (part) towns of	Chesterfield town	Cummington town	Goshen town
	Middlefield town	Pelham town	Plainfield town	Westhampton town
	Worthington town			
	Nantucket County			
Michigan	Benzie County	Grand Traverse County	Otsego County	

2006 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
Mississippi	Adams County	Benton County	Bolivar County	Chickasaw County
	Clarke County	Coahoma County	Holmes County	Humphreys County
	Issaquena County	Jasper County	Jones County	Kemper County
	Lafayette County	Lauderdale County	Leake County	Leflore County
	Marshall County	Neshoba County	Newton County	Noxubee County
	Oktibbeha County	Panola County	Pearl River County	Perry County
	Quitman County	Scott County	Sharkey County	Simpson County
	Stone County	Tallahatchie County	Tunica County	Warren County
	Washington County	Wayne County	Winston County	Yazoo County
Missouri	Stone County	Taney County		
Montana	Beaverhead County	Flathead County	Lincoln County	Madison County
	Meagher County	Mineral County	Park County	Ravalli County
	Sanders County			
Nevada	Carson City	Churchill County	Douglas County	Lyon County
New Hampshire	Belknap County	Carroll County	Cheshire County	Grafton County
	HILLSBOROUGH COUNTY (part) towns of	Antrim town	Bennington town	Deering town
	Francestown town	Greenfield town	Hancock town	Hillsborough town
	Lyndeborough town	New Boston town	Peterborough town	Sharon town
	Temple town	Windsor town		
	MERRIMACK COUNTY (part) towns of	Andover town	Boscawen town	Bow town
	Bradford town	Canterbury town	Chichester town	Concord city
	Danbury town	Dunbarton town	Epsom town	Franklin city
	Henniker town	Hill town	Hopkinton town	Loudon town
	Newbury town	New London town	Northfield town	Pembroke town
	Pittsfield town	Salisbury town	Sutton town	Warner town
	Webster town	Wilmot town		
	ROCKINGHAM COUNTY (part) towns of	Deerfield town	Northwood town	Nottingham town
New Mexico	Chaves County	Grant County	Guadalupe County	Lincoln County
	McKinley County	Mora County	Rio Arriba County	San Juan County
	San Miguel County	Taos County		
New York	Greene County	Jefferson County	Sullivan County	Ulster County

2006 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
North Carolina	Avery County	Chowan County	Cleveland County	Dare County
	Gates County	Hoke County	Hyde County	Jackson County
	Jones County	Macon County	McDowell County	Mitchell County
	Pasquotank County	Perquimans County	Rutherford County	Tyrrell County
	Washington County	Watauga County		
Oklahoma	Hughes County	Okfuskee County		
Oregon	Clatsop County	Coos County	Crook County	Curry County
	Douglas County	Gilliam County	Grant County	Hood River County
	Josephine County	Lincoln County	Linn County	Morrow County
	Tillamook County	Wheeler County		
Pennsylvania	Monroe County	Wayne County		
Rhode Island	Newport County			
South Carolina	Beaufort County			
Tennessee	Bedford County	Haywood County	Polk County	
Texas	Aransas County	Brown County	Camp County	Coke County
	Coleman County	Comanche County	Dallam County	Eastland County
	Frio County	Houston County	Kerr County	Kleberg County
	Lamar County	Leon County	Llano County	Madison County
	Marion County	Medina County	Mills County	Montague County
	Nacogdoches County	Navarro County	Red River County	Robertson County
	San Jacinto County	San Saba County	Titus County	Trinity County
	Walker County			
Utah	Beaver County	Cache County	Garfield County	Juab County
	Millard County	Piute County	Sanpete County	Sevier County
	Summit County	Wasatch County	Washington County	Wayne County
Vermont	Bennington County			
	FRANKLIN COUNTY (part) towns of	Bakersfield town	Berkshire town	Enosburg town
	Fairfield town	Fletcher town	Franklin town	Highgate town
	Montgomery town	Richford town	Sheldon town	
	GRAND ISLE COUNTY (part) towns of	Alburg town	Isle La Motte town	North Hero town
	Windham County			
Virginia	Northampton County	Westmoreland County		
Washington	Douglas County	Jefferson County	Kittitas County	Klickitat County
	Lewis County	Mason County	San Juan County	Skagit County

2006 IRS SECTION 42(d)(5)(C) NONMETROPOLITAN DIFFICULT DEVELOPMENT AREAS (MSA/PMSA DEFINITIONS June 30, 1999)

State	Nonmetropolitan Counties or County Equivalents			
West Virginia	Calhoun County	Clay County	Doddridge County	Grant County
	Pendleton County	Preston County	Roane County	Taylor County
	Wirt County			
Wyoming	Teton County			
American Samoa	Eastern District	Manu'a District	Swains Island	Western District
Guam	Guam			
Northern Mariana Islands	Northern Islands Municipality	Rota Municipality	Saipan Municipality	Tinian Municipality
Puerto Rico	Adjuntas Municipio	Aibonito Municipio	Arroyo Municipio	Barranquitas Municipio
	Ciales Municipio	Coamo Municipio	Culebra Municipio	Guanica Municipio
	Guayama Municipio	Isabela Municipio	Jayuya Municipio	Lajas Municipio
	Lares Municipio	Las Marias Municipio	Maricao Municipio	Maunabo Municipio
	Orocovis Municipio	Patillas Municipio	Quebradillas Municipio	Rincon Municipio
	Salinas Municipio	San Sebastian Municipio	Santa Isabel Municipio	Utuado Municipio
	Vieques Municipio			
Virgin Islands	St. Croix	St. John	St. Thomas	

[FR Doc. 05–16605 Filed 8–19–05; 8:45 am]
BILLING CODE 4210–62–C

Reader Aids

Federal Register

Vol. 70, No. 161

Monday, August 22, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal_register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, AUGUST

44041–44218 1
44219–44462 2
44463–44846 3
44847–45272 4
45273–45522 5
45523–46064 8
46065–46402 9
46403–46740 10
46741–47076 11
47077–47710 12
47711–48056 15
48057–48268 16
48269–48472 17
48473–48632 18
48632–48838 19
48839–49152 22

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7916 46401
7917 48473
Executive Orders:
13222 (See Notice of August 2, 2005) 45273
Administrative Orders:
Memorandums:
Memorandum of April 21, 2005 48633
Memorandum of July 1, 2005 (Amends Memorandum of April 21, 2005) 48633
Memorandum of July 4, 2005 44041
Memorandums of July 30, 2005 46741
Memorandum of August 5, 2005 46397
Presidential Determination:
No. 2005-31 of August 2, 2005 46395
Notices:
Notice of August 2, 2005 45273

5 CFR

213 44219
315 44219
337 44847
370 47711
576 46065
841 48839
842 48839
843 48839
Proposed Rules:
532 48899
591 44976
1201 48081
2634 47138

7 CFR

1 47077
247 47052
301 ..... 44222, 45523, 46065
400 44222
916 44243
917 44243
920 48839
923 44249
946 44252
996 44043
Proposed Rules:
82 44525
762 ..... 46779, 47730
916 48900
917 48900
920 48082
948 48903
1755 45314

9 CFR

77 47078
78 47078
Proposed Rules:
3 45322
94 48494
101 48325
116 48325
304 47147
308 47147
310 47147
320 47147
327 47147
381 47147
391 48238
416 47147
417 47147
590 48238
592 48238

10 CFR

110 46066
170 46265
171 46265
1303 47079
Proposed Rules:
20 45571
32 45571
51 ..... 47148, 48329
150 45571

12 CFR

11 46403
25 44256
201 48269
226 46066
228 44256
229 ..... 47085, 48842
335 44270
345 44256
Proposed Rules:
Ch. I 46779
Ch. II 46779
Ch. III 46779
Ch. V 46779
4 45323
19 45323
263 45323
264a 45323
308 45323
330 45571
336 45323
363 44293
507 45323
509 45323

13 CFR

Ch. III 47002, 47049

14 CFR

23 ..... 44463, 45275

25.....48842, 48844
36.....45502
39 .....44046, 44273, 44274, 44276, 45526, 46067, 46069, 46072, 46074, 46076, 46743, 46747, 46752, 46754, 47086, 47716, 47720, 47722, 48848, 48850, 48852, 48854, 48857
61.....45264
71 .....44465, 45275, 45527, 46078, 46754, 48057, 48238, 48859, 48860
73.....44466, 45528
95.....44278
97.....47090, 48635
257.....44848
1260.....46079

Proposed Rules:
25 .....46099, 46100, 46102, 46104, 46106, 46108, 46110, 46112, 46113, 46115, 46785
39 .....44297, 45581, 45585, 45587, 45590, 45592, 45595, 46437, 43439, 46788, 46790, 48084, 48085, 48333, 48336, 48339, 48500, 48502, 48657, 48660, 48904, 48906, 48908, 48911, 48914, 48918
71 .....44300, 44533, 44868, 44869, 45599
93.....45250

15 CFR

4.....47725
738.....45276
740.....45276
745.....45276
772.....45276
774.....45276
801.....48270
902.....48860

Proposed Rules:
806.....48920

16 CFR

Proposed Rules:
803.....47733

17 CFR

200.....44722
228.....44722, 46080
229.....44722, 46080
230.....44722
239.....44722
240 .....44722, 46080, 46089
242.....45529
243.....44722
249.....44722
274.....44722

18 CFR

35.....47093

Proposed Rules:
410.....48923

19 CFR

Proposed Rules:
101.....47151
351.....47738

20 CFR

Proposed Rules:
404.....46792, 48342
416.....46792

21 CFR

179.....48057
510.....48272
520.....44048
522.....48272, 48868
524.....44719
556.....44048
558.....44049
1240.....48073
1301.....47094

22 CFR

Proposed Rules:
62.....47152

24 CFR

Proposed Rules:
200.....45492
206.....45498
290.....45492

25 CFR

542.....47097

26 CFR

1 .....44467, 45529, 45530, 46758, 47108, 47109, 48868
54.....47109

Proposed Rules:
1 .....44535, 47155, 48924
41.....47160
48.....47160
145.....47160

27 CFR

Proposed Rules:
9.....47740

29 CFR

1601.....47127, 47128
4022.....47725
4044.....47725

Proposed Rules:
1910.....44074

30 CFR

5.....46336, 48871
15.....46336, 48871
18.....46336, 48871
19.....46336, 48871
20.....46336, 48871
22.....46336, 48871
23.....46336, 48871
27.....46336, 48871
28.....46336, 48871
33.....46336, 48871
35.....46336, 48871
36.....46336, 48871

Proposed Rules:
5.....46345, 48925
15.....46345, 48925
18.....46345, 48925
19.....46345, 48925
20.....46345, 48925
22.....46345, 48925
23.....46345, 48925
27.....46345, 48925
28.....46345, 48925
33.....46345, 48925
35.....46345, 48925
36.....46345, 48925
925.....48925

31 CFR

537.....48240

32 CFR

706 .....46758, 46759, 46761, 46762, 46763, 46765, 46766
806b.....46405

Proposed Rules:
174.....46116
175.....46116
176.....46116
581.....44536

33 CFR

100 .....44470, 45531, 46405, 48475, 48477, 48479
117 .....44852, 45534, 45535, 45536, 48273, 48637
165 .....44470, 45531, 45537, 46407, 48274, 48872

Proposed Rules:
100.....47160, 48505
110.....45607
117 .....46441, 48088, 48091, 48354, 48929

36 CFR

242.....46768
1191.....45283

Proposed Rules:
111.....47754
242.....46795
1011.....44870
1260.....47161

37 CFR

201.....44049

Proposed Rules:
202.....44878

39 CFR

3001.....48276
3002.....48276
3003.....48276

40 CFR

51.....44470
52 .....44052, 44055, 44478, 44481, 44852, 44855, 45539, 45542, 46090, 46770, 46772, 48073, 48078, 48277, 48280, 48283, 48285, 48287, 48640, 48642, 48645, 48647, 48650, 48652, 48874, 48877, 48880
62.....46773, 48654
63.....44285, 46684
81.....44470, 48238
180 .....44483, 44488, 44492, 44857, 46410, 46419, 46428, 46706
258.....44150
260.....45508
261 .....44150, 44496, 45508
264.....44150, 45508
265.....45508
268.....44505, 45508
270.....45508
273.....45508
300.....44063

Proposed Rules:
Ch. I.....46444
26.....46448
51.....44154
52 .....44075, 44537, 45607, 46126, 46127, 46448, 46798, 47757, 48093, 48238
60.....45608
62.....46798, 48662
63 .....45608, 46452, 46701
136.....48256
141.....49094
155.....48356
180.....45625
197.....49014
271.....46799
300.....44076, 45334
420.....46459

42 CFR

405.....47278
409.....45026
411.....45026
412.....47278, 47880
413.....47278
415.....47278
418.....45130
419.....47278
422.....47278
424.....45026
485.....47278
489.....45026

Proposed Rules:
402.....44879
405.....45764
410.....45764
411.....45764
413.....45764
414.....45764
426.....45764
483.....47759

43 CFR

39.....44512
1820.....45312

44 CFR

64.....48481
67.....47128, 47129

Proposed Rules:
67.....47166

45 CFR

1611.....45545
2510.....48882
2520.....48882
2521.....48882
2540.....48882
2550.....48882

46 CFR

501.....44866
502.....44866

Proposed Rules:
389.....47771
531.....45626

47 CFR

2.....46576
25.....46576
51.....48290
73 .....44513, 44514, 44515, 44516, 44517, 44518, 44519, 44520, 46576, 48291, 48292, 48293, 48294
76.....48295
90.....46576
97.....46576

Proposed Rules:
1.....44537
73 .....44537, 44542, 44543, 48357, 48358, 48359, 48360, 48361, 48362

48 CFR

52.....46776

6101.....48882
Proposed Rules:
204.....46807
235.....46807
246.....44077
252.....44077, 46807

49 CFR

390.....48008
392.....48008
393.....48008
541.....46092
551.....45565
571 .....44520, 46431, 47131, 48295, 48313, 48883
586.....46431
Proposed Rules:
567.....48507
571.....46807, 48362
584.....48507

50 CFR

17 .....46304, 46366, 46924, 48482, 48896
18.....48321
100.....46768
229.....44289
622.....48323
635.....48490
648.....44066, 44291
660 .....44069, 44070, 44072, 47727, 48897
679 .....44523, 46097, 46098, 46436, 46776, 46777, 47728
Proposed Rules:
17 .....44078, 44301, 44544, 44547, 46387, 46465, 46467, 48093, 48094
20 .....44200, 45336, 49068
100.....46795
300.....47774, 48804
600.....47777, 48804
635.....48804
648.....45628
660 .....47777, 47781, 47782
679.....45638

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 22, 2005

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

New Mexico; published 7-21-05

Hazardous waste program authorizations:

Vermont; published 6-23-05

FEDERAL COMMUNICATIONS COMMISSION

Digital television stations; table of assignments:

Oklahoma; published 7-20-05

Practice and procedure:

Regulatory fees (2005 FY); assessment and collection; published 7-21-05

FEDERAL ELECTION COMMISSION

Corporate and labor organization activity:

Trade association's separate segregated fund; payroll deductions by member corporations for contributions; published 7-21-05

GENERAL SERVICES ADMINISTRATION

Acqusition regulations:

Board of contract appeals; payment of awards; published 8-22-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Health care access:

Group health insurance market requirements; mental health parity; published 7-22-05

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Flunixin; published 8-22-05

Freedom of Information Act; implementation; published 7-21-05

LABOR DEPARTMENT

Mine Safety and Health Administration

Fees for testing, evaluating and approval of mining products

Correction; published 8-22-05

SECURITIES AND EXCHANGE COMMISSION

Securities:

Delisting and deregistration procedures; published 7-22-05

Shell companies; Forms S-8 and 8-K use; published 7-21-05

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad locomotive safety standards:

Inspection and maintenance standards for steam locomotives; published 7-21-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

California Clingstone Peach Diversion Program; comments due by 9-2-05; published 8-3-05 [FR 05-15231]

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Nectarines and peaches grown in—

California; comments due by 9-1-05; published 8-22-05 [FR 05-16572]

AGRICULTURE DEPARTMENT

Energy Office, Agriculture Department

Biobased products; designation guidance for federal procurement; comments due by 8-30-05; published 7-5-05 [FR 05-12978]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Food Program—

Management and program integrity improvement; comments due by 9-1-05; published 9-1-04 [FR 04-19628]

AGRICULTURE DEPARTMENT

Forest Service

National Forest System timber; sale and disposal:

Market-related contract term additions; indices; comments due by 8-29-05; published 6-29-05 [FR 05-12811]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

AGRICULTURE DEPARTMENT

Practice and procedure:

Audits of States, local governments and non-profit organizations; comments due by 8-30-05; published 6-16-05 [FR 05-11840]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Magnuson-Stevens Act provisions—

Bering Sea and Aleutian Islands king and tanner crabs; fishing capacity reduction program; industry fee system; comments due by 8-29-05; published 7-28-05 [FR 05-14951]

West Coast States and Western Pacific fisheries—

Salmon and coho; recreational fishery adjustments; comments due by 8-30-05; published 8-15-05 [FR 05-16118]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Army Department

Personnel:

Army Board for Correction of Military Records; policies, procedures, and administrative instructions; comments due by 9-2-05; published 8-3-05 [FR 05-15299]

DEFENSE DEPARTMENT

Acquisition regulations:

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Acquisition regulations:

Technical revisions or amendments to update clauses; comments due by 8-29-05; published 7-29-05 [FR 05-14810]

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

Research misconduct policy; comments due by 8-29-05; published 6-28-05 [FR 05-12645]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and

promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 8-29-05; published 7-29-05 [FR 05-15058]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 8-29-05; published 7-28-05 [FR 05-14931]
Colorado; comments due by 8-31-05; published 8-1-05 [FR 05-15053]
Maryland; comments due by 8-29-05; published 7-29-05 [FR 05-15051]
Oregon; correction; comments due by 9-2-05; published 8-3-05 [FR 05-15337]
Utah; comments due by 8-31-05; published 8-1-05 [FR 05-15149]
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Acetonitrile, etc.; comments due by 8-31-05; published 8-8-05 [FR 05-15606]
Cyprodinil; comments due by 8-29-05; published 6-30-05 [FR 05-12921]
Ethyl maltol; comments due by 8-29-05; published 6-30-05 [FR 05-12920]
Terbacil, etc.; comments due by 8-29-05; published 6-30-05 [FR 05-12919]
Solid waste:
Hazardous waste; identification and listing—
Exclusions; comments due by 9-2-05; published 7-19-05 [FR 05-14189]
Superfund program:
National oil and hazardous substances contingency plan priorities list; comments due by 8-29-05; published 7-29-05 [FR 05-15043]
Water pollution control:
National Pollutant Discharge Elimination System—
Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Freedom of Information Act (FOIA):
Fee schedule; revision; comments due by 8-30-05; published 7-1-05 [FR 05-12979]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:
Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]
Common carrier services:
Interconnection—
Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]
Practice and procedure:
Economic impact of Commission's rules on small entities; regulatory review; comments request; comments due by 9-1-05; published 6-8-05 [FR 05-11170]
Radio stations; table of assignments:
California; comments due by 9-2-05; published 7-13-05 [FR 05-13465]
Kansas; comments due by 8-29-05; published 8-3-05 [FR 05-14965]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and Medicaid:
Long term care facilities; immunization standard; participation condition; comments due by 8-30-05; published 8-15-05 [FR 05-16160]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
New Jersey; comments due by 8-29-05; published 7-29-05 [FR 05-15065]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Hudson River, NY; comments due by 8-29-05; published 7-29-05 [FR 05-15079]
Regattas and marine parades:
Liberty Grand Prix; comments due by 9-2-05; published 8-18-05 [FR 05-16411]
Montauk Channel and Block Island Sound; comments due by 8-30-05; published 7-1-05 [FR 05-13066]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Critical habitat designations—
Arkansas River shiner; Arkansas River Basin population; comments due by 8-31-05; published 8-1-05 [FR 05-15164]
Findings on petitions, etc.—
Karst meshweaver; comments due by 8-30-05; published 8-16-05 [FR 05-16150]
Migratory bird hunting:
Late-season migratory bird hunting regulations; comments due by 9-1-05; published 8-22-05 [FR 05-16393]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:
Embutramide; placement into Schedule III; comments due by 8-29-05; published 7-29-05 [FR 05-15035]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]
Rulemaking petitions:
Salsman, James; comments due by 8-29-05; published 6-15-05 [FR 05-11799]
Spano, Andrew J.; comments due by 8-29-05; published 6-15-05 [FR 05-11800]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further

notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- Bell Helicopter Textron Canada; comments due by 8-29-05; published 6-28-05 [FR 05-12690]
- Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
- Pilatus Aircraft Ltd.; comments due by 8-31-05; published 8-2-05 [FR 05-15181]
- Robinson Helicopter Co.; comments due by 8-29-05; published 6-28-05 [FR 05-12688]
- Turbomeca; comments due by 8-29-05; published 6-28-05 [FR 05-12692]

Airworthiness standards:
- Special conditions—
  - Maule Aerospace Technology, Inc., Model M-7-230, M-7-230C, and M-9-230 airplanes; comments due by 9-2-05; published 8-3-05 [FR 05-15310]

Class C and Class E airspace; comments due by 8-29-05; published 7-29-05 [FR 05-14977]

Class D and E airspace; comments due by 8-31-05; published 7-29-05 [FR 05-14984]

Class E airspace; comments due by 8-29-05; published 7-29-05 [FR 05-14981]

Commercial space transportation; safety approvals; comments due by 8-30-05; published 6-1-05 [FR 05-10723]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:
- Child restraint systems—
  - Exposed webbing; minimum breaking strength; comments due by 8-29-05; published 6-30-05 [FR 05-12875]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:
- Labeling; wines, vintage date statement minimum content requirement amendment; comments due by 8-30-05; published 7-1-05 [FR 05-13041]

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:
- Appeals regulations and rules of practice—
  - Disagreement notice; clarification; comments due by 8-29-05; published 6-30-05 [FR 05-12864]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3423/P.L. 109–43

Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

H.R. 38/P.L. 109–44

Upper White Salmon Wild and Scenic Rivers Act (Aug. 2, 2005; 119 Stat. 443)

H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the ''Congresswoman Shirley A. Chisholm Post Office Building''. (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the ''Boone Pickens Post Office''. (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the ''Brian P. Parrello Post Office Building''. (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

Last List August 2, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The CFR is available free on-line through the Government Printing Office's GPO Access Service at http://www.access.gpo.gov/nara/cfr/index.html. For information about GPO Access call the GPO User Support Team at 1-888-293-6498 (toll free) or 202-512-1530.

The annual rate for subscription to all revised paper volumes is $1195.00 domestic, $298.75 additional for foreign mailing.

Mail orders to the Superintendent of Documents, Attn: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954. All orders must be accompanied by remittance (check, money order, GPO Deposit Account, VISA, Master Card, or Discover). Charge orders may be telephoned to the GPO Order Desk, Monday through Friday, at **(202) 512–1800** from 8:00 a.m. to 4:00 p.m. eastern time, or FAX your charge orders to **(202) 512-2250**.

Title	Stock Number	Price	Revision Date
1	(869–056–00001–4)	5.00	Jan. 1, 2005
2	(869–056–00002–2)	5.00	Jan. 1, 2005
3 (2003 Compilation and Parts 100 and 101)	(869–056–00003–1)	35.00	[1] Jan. 1, 2005
4	(869–056–00004–9)	10.00	[4]Jan. 1, 2005
5 Parts:			
1–699	(869–056–00005–7)	60.00	Jan. 1, 2005
700–1199	(869–056–00006–5)	50.00	Jan. 1, 2005
1200–End	(869–056–00007–3)	61.00	Jan. 1, 2005
6	(869–056–00008–1)	10.50	Jan. 1, 2005
7 Parts:			
1–26	(869–056–00009–0)	44.00	Jan. 1, 2005
27–52	(869–056–00010–3)	49.00	Jan. 1, 2005
53–209	(869–056–00011–1)	37.00	Jan. 1, 2005
210–299	(869–056–00012–0)	62.00	Jan. 1, 2005
300–399	(869–056–00013–8)	46.00	Jan. 1, 2005
400–699	(869–056–00014–6)	42.00	Jan. 1, 2005
700–899	(869–056–00015–4)	43.00	Jan. 1, 2005
900–999	(869–056–00016–2)	60.00	Jan. 1, 2005
1000–1199	(869–056–00017–1)	22.00	Jan. 1, 2005
1200–1599	(869–056–00018–9)	61.00	Jan. 1, 2005
1600–1899	(869–056–00019–7)	64.00	Jan. 1, 2005
1900–1939	(869–056–00020–1)	31.00	Jan. 1, 2005
1940–1949	(869–056–00021–9)	50.00	Jan. 1, 2005
1950–1999	(869–056–00022–7)	46.00	Jan. 1, 2005
2000–End	(869–056–00023–5)	50.00	Jan. 1, 2005
8	(869–056–00024–3)	63.00	Jan. 1, 2005
9 Parts:			
1–199	(869–056–00025–1)	61.00	Jan. 1, 2005
200–End	(869–056–00026–0)	58.00	Jan. 1, 2005
10 Parts:			
1–50	(869–056–00027–8)	61.00	Jan. 1, 2005
51–199	(869–056–00028–6)	58.00	Jan. 1, 2005
200–499	(869–056–00029–4)	46.00	Jan. 1, 2005
500–End	(869–056–00030–8)	62.00	Jan. 1, 2005
11	(869–056–00031–6)	41.00	Jan. 1, 2005
12 Parts:			
1–199	(869–056–00032–4)	34.00	Jan. 1, 2005
200–219	(869–056–00033–2)	37.00	Jan. 1, 2005
220–299	(869–056–00034–1)	61.00	Jan. 1, 2005
300–499	(869–056–00035–9)	47.00	Jan. 1, 2005
500–599	(869–056–00036–7)	39.00	Jan. 1, 2005
600–899	(869–056–00037–5)	56.00	Jan. 1, 2005
900–End	(869–056–00038–3)	50.00	Jan. 1, 2005
13	(869–056–00039–1)	55.00	Jan. 1, 2005
14 Parts:			
1–59	(869–056–00040–5)	63.00	Jan. 1, 2005
60–139	(869–056–00041–3)	61.00	Jan. 1, 2005
140–199	(869–056–00042–1)	30.00	Jan. 1, 2005
200–1199	(869–056–00043–0)	50.00	Jan. 1, 2005
1200–End	(869–056–00044–8)	45.00	Jan. 1, 2005
15 Parts:			
0–299	(869–056–00045–6)	40.00	Jan. 1, 2005
300–799	(869–056–00046–4)	60.00	Jan. 1, 2005
800–End	(869–056–00047–2)	42.00	Jan. 1, 2005
16 Parts:			
0–999	(869–056–00048–1)	50.00	Jan. 1, 2005
1000–End	(869–056–00049–9)	60.00	Jan. 1, 2005
17 Parts:			
1–199	(869–056–00051–1)	50.00	Apr. 1, 2005
200–239	(869–056–00052–9)	58.00	Apr. 1, 2005
240–End	(869–056–00053–7)	62.00	Apr. 1, 2005
18 Parts:			
1–399	(869–056–00054–5)	62.00	Apr. 1, 2005
400–End	(869–056–00055–3)	26.00	[9]Apr. 1, 2005
19 Parts:			
1–140	(869–056–00056–1)	61.00	Apr. 1, 2005
141–199	(869–056–00057–0)	58.00	Apr. 1, 2005
200–End	(869–056–00058–8)	31.00	Apr. 1, 2005
20 Parts:			
1–399	(869–056–00059–6)	50.00	Apr. 1, 2005
400–499	(869–056–00060–0)	64.00	Apr. 1, 2005
500–End	(869–056–00061–8)	63.00	Apr. 1, 2005
21 Parts:			
1–99	(869–056–00062–6)	42.00	Apr. 1, 2005
100–169	(869–056–00063–4)	49.00	Apr. 1, 2005
170–199	(869–056–00064–2)	50.00	Apr. 1, 2005
200–299	(869–056–00065–1)	17.00	Apr. 1, 2005
300–499	(869–056–00066–9)	31.00	Apr. 1, 2005
500–599	(869–056–00067–7)	47.00	Apr. 1, 2005
600–799	(869–056–00068–5)	15.00	Apr. 1, 2005
800–1299	(869–056–00069–3)	58.00	Apr. 1, 2005
1300–End	(869–056–00070–7)	24.00	Apr. 1, 2005
22 Parts:			
1–299	(869–056–00071–5)	63.00	Apr. 1, 2005
300–End	(869–056–00072–3)	45.00	Apr. 1, 2005
23	(869–056–00073–1)	45.00	Apr. 1, 2005
24 Parts:			
0–199	(869–056–00074–0)	60.00	Apr. 1, 2005
200–499	(869–056–00074–0)	50.00	Apr. 1, 2005
500–699	(869–056–00076–6)	30.00	Apr. 1, 2005
700–1699	(869–056–00077–4)	61.00	Apr. 1, 2005
1700–End	(869–056–00078–2)	30.00	Apr. 1, 2005
25	(869–056–00079–1)	63.00	Apr. 1, 2005
26 Parts:			
§§ 1.0–1–1.60	(869–056–00080–4)	49.00	Apr. 1, 2005
§§ 1.61–1.169	(869–056–00081–2)	63.00	Apr. 1, 2005
§§ 1.170–1.300	(869–056–00082–1)	60.00	Apr. 1, 2005
§§ 1.301–1.400	(869–056–00083–9)	46.00	Apr. 1, 2005
§§ 1.401–1.440	(869–056–00084–7)	62.00	Apr. 1, 2005
§§ 1.441–1.500	(869–056–00085–5)	57.00	Apr. 1, 2005
§§ 1.501–1.640	(869–056–00086–3)	49.00	Apr. 1, 2005
§§ 1.641–1.850	(869–056–00087–1)	60.00	Apr. 1, 2005
§§ 1.851–1.907	(869–056–00088–0)	61.00	Apr. 1, 2005
§§ 1.908–1.1000	(869–056–00089–8)	60.00	Apr. 1, 2005
§§ 1.1001–1.1400	(869–056–00090–1)	61.00	Apr. 1, 2005
§§ 1.1401–1.1550	(869–056–00091–0)	55.00	Apr. 1, 2005
§§ 1.1551–End	(869–056–00092–8)	55.00	Apr. 1, 2005
2–29	(869–056–00093–6)	60.00	Apr. 1, 2005
30–39	(869–056–00094–4)	41.00	Apr. 1, 2005
40–49	(869–056–00095–2)	28.00	Apr. 1, 2005
50–299	(869–056–00096–1)	41.00	Apr. 1, 2005

Title	Stock Number	Price	Revision Date
300–499	(869–056–00097–9)	61.00	Apr. 1, 2005
500–599	(869–056–00098–7)	12.00	[5]Apr. 1, 2005
600–End	(869–056–00099–5)	17.00	Apr. 1, 2005
27 Parts:			
1–199	(869–056–00100–2)	64.00	Apr. 1, 2005
200–End	(869–056–00101–1)	21.00	Apr. 1, 2005
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
*100–499	(869–056–00105–3)	23.00	July 1, 2005
*500–899	(869–056–00106–1)	61.00	July 1, 2005
900–1899	(869–052–00106–6)	36.00	July 1, 2004
1900–1910 (§§ 1900 to 1910.999)	(869–052–00107–4)	61.00	July 1, 2004
1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
700–End	(869–052–00114–7)	58.00	July 1, 2004
31 Parts:			
0–199	(869–052–00115–5)	41.00	July 1, 2004
200–End	(869–052–00116–3)	65.00	July 1, 2004
32 Parts:			
1–39, Vol. I		15.00	[2]July 1, 1984
1–39, Vol. II		19.00	[2]July 1, 1984
1–39, Vol. III		18.00	[2]July 1, 1984
1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
*400–629	(869–056–00121–5)	50.00	July 1, 2005
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
800–End	(869–052–00122–8)	47.00	July 1, 2004
33 Parts:			
1–124	(869–052–00123–6)	57.00	July 1, 2004
125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
1–299	(869–052–00126–1)	50.00	July 1, 2004
300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
36 Parts			
1–199	(869–052–00130–9)	37.00	July 1, 2004
200–299	(869–052–00131–7)	37.00	July 1, 2004
300–End	(869–052–00132–5)	61.00	July 1, 2004
37	(869–052–00133–3)	58.00	July 1, 2004
38 Parts:			
0–17	(869–052–00134–1)	60.00	July 1, 2004
18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
40 Parts:			
1–49	(869–052–00137–6)	60.00	July 1, 2004
50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–052–00140–6)	61.00	July 1, 2004
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
63 (63.8980–End)	(869–052–00149–0)	35.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
86 (86.1–86.599–99)	(869–052–00153–8)	58.00	July 1, 2004
86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
300–399	(869–052–00162–7)	42.00	July 1, 2004
400–424	(869–052–00163–5)	56.00	[8]July 1, 2004
425–699	(869–052–00164–3)	61.00	July 1, 2004
700–789	(869–052–00165–1)	61.00	July 1, 2004
790–End	(869–052–00166–0)	61.00	July 1, 2004
41 Chapters:			
1, 1–1 to 1–10		13.00	[3]July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3]July 1, 1984
3–6		14.00	[3]July 1, 1984
7		6.00	[3]July 1, 1984
8		4.50	[3]July 1, 1984
9		13.00	[3]July 1, 1984
10–17		9.50	[3]July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3]July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3]July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3]July 1, 1984
19–100		13.00	[3]July 1, 1984
1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
42 Parts:			
1–399	(869–052–00171–6)	61.00	Oct. 1, 2004
400–429	(869–052–00172–4)	63.00	Oct. 1, 2004
430–End	(869–052–00173–2)	64.00	Oct. 1, 2004
43 Parts:			
1–999	(869–052–00174–1)	56.00	Oct. 1, 2004
1000–end	(869–052–00175–9)	62.00	Oct. 1, 2004
44	(869–052–00176–7)	50.00	Oct. 1, 2004
45 Parts:			
1–199	(869–052–00177–5)	60.00	Oct. 1, 2004
200–499	(869–052–00178–3)	34.00	Oct. 1, 2004
500–1199	(869–052–00179–1)	56.00	Oct. 1, 2004
1200–End	(869–052–00180–5)	61.00	Oct. 1, 2004
46 Parts:			
1–40	(869–052–00181–3)	46.00	Oct. 1, 2004
41–69	(869–052–00182–1)	39.00	Oct. 1, 2004
70–89	(869–052–00183–0)	14.00	Oct. 1, 2004
90–139	(869–052–00184–8)	44.00	Oct. 1, 2004
140–155	(869–052–00185–6)	25.00	Oct. 1, 2004
156–165	(869–052–00186–4)	34.00	Oct. 1, 2004
166–199	(869–052–00187–2)	46.00	Oct. 1, 2004
200–499	(869–052–00188–1)	40.00	Oct. 1, 2004
500–End	(869–052–00189–9)	25.00	Oct. 1, 2004
47 Parts:			
0–19	(869–052–00190–2)	61.00	Oct. 1, 2004
20–39	(869–052–00191–1)	46.00	Oct. 1, 2004
40–69	(869–052–00192–9)	40.00	Oct. 1, 2004
70–79	(869–052–00193–8)	63.00	Oct. 1, 2004
80–End	(869–052–00194–5)	61.00	Oct. 1, 2004
48 Chapters:			
1 (Parts 1–51)	(869–052–00195–3)	63.00	Oct. 1, 2004
1 (Parts 52–99)	(869–052–00196–1)	49.00	Oct. 1, 2004
2 (Parts 201–299)	(869–052–00197–0)	50.00	Oct. 1, 2004
3–6	(869–052–00198–8)	34.00	Oct. 1, 2004
7–14	(869–052–00199–6)	56.00	Oct. 1, 2004
15–28	(869–052–00200–3)	47.00	Oct. 1, 2004
29–End	(869–052–00201–1)	47.00	Oct. 1, 2004

Title	Stock Number	Price	Revision Date
49 Parts:			
1–99	(869–052–00202–0)	60.00	Oct. 1, 2004
100–185	(869–052–00203–8)	63.00	Oct. 1, 2004
186–199	(869–052–00204–6)	23.00	Oct. 1, 2004
200–399	(869–052–00205–4)	64.00	Oct. 1, 2004
400–599	(869–052–00206–2)	64.00	Oct. 1, 2004
600–999	(869–052–00207–1)	19.00	Oct. 1, 2004
1000–1199	(869–052–00208–9)	28.00	Oct. 1, 2004
1200–End	(869–052–00209–7)	34.00	Oct. 1, 2004
50 Parts:			
1–16	(869–052–00210–1)	11.00	Oct. 1, 2004
17.1–17.95	(869–052–00211–9)	64.00	Oct. 1, 2004
17.96–17.99(h)	(869–052–00212–7)	61.00	Oct. 1, 2004
17.99(i)–end and 17.100–end	(869–052–00213–5)	47.00	Oct. 1, 2004
18–199	(869–052–00214–3)	50.00	Oct. 1, 2004
200–599	(869–052–00215–1)	45.00	Oct. 1, 2004
600–End	(869–052–00216–0)	62.00	Oct. 1, 2004
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2005 CFR set		1,342.00	2005
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2005
Individual copies		4.00	2005
Complete set (one-time mailing)		325.00	2004
Complete set (one-time mailing)		298.00	2003

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2004, through January 1, 2005. The CFR volume issued as of January 1, 2004 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period April 1, 2004, through April 1, 2005. The CFR volume issued as of April 1, 2004 should be retained.