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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 310 and 318

[Docket No. 03–0251FA]

Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its interim final rule, “*Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle*,” published in the **Federal Register** on January 12, 2004. The amendments permit beef small intestine, excluding the distal ileum, to be used for human food, provided that such product is derived from cattle that were slaughtered in an official establishment in the United States or in a certified foreign establishment from a foreign country that is eligible to export beef products to the United States. Although the distal ileum is the only portion of the small intestine in which BSE infectivity has been confirmed, the January 2004 interim final rule requires that the entire small intestine of all cattle be removed and disposed of as inedible. FSIS is taking this action based on the Agency’s evaluation of this issue and of the comments received on the interim final rule, as well as comments received on an advance notice of proposed rulemaking published in July 2004. FSIS has concluded that the distal ileum can be effectively removed from the rest of the small intestine. FSIS has determined that removal of the distal ileum in accordance with the amendments in this document will

provide the same level of protection from human exposure to the BSE agent as does the exclusion of the entire small intestine from the human food supply.

DATES: This interim final rule is effective October 7, 2005. Comments on this interim final rule must be received by November 7, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on this amended interim final rule. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM’s, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Electronic mail:

fsis.regulationscomments@fsis.usda.gov. Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 03–0251FA.

All comments submitted in response to this amended interim final rule, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency’s Web site at http://www.fsis.usda.gov/regulations_&_policies/2005_Interim_&_Final_Rules_Index/index.asp.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Deputy Assistant Administrator, Office of Policy, Program, and Employee Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On January 12, 2004, FSIS issued a series of three interim final rules to minimize human exposure to materials that scientific studies have demonstrated contain the BSE agent in cattle infected with the disease. FSIS issued the rules in response to the diagnosis on December 23, 2003, of BSE

in an imported dairy cow in Washington State. The animal had been imported from Canada. One of the rules, “*Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-ambulatory Disabled Cattle*” (69 FR 1826, January 12, 2004) (also referred to as “the SRM interim final rule” or “the SRM rule”), among other things, designates certain materials from cattle as SRMs, declares that SRMs are inedible, and prohibits the use of these materials for human food (9 CFR 310.22(a) and 9 CFR 310.22(b)). The SRM rule also requires that establishments that slaughter cattle, and establishments that process the carcasses and parts of cattle, incorporate their procedures for the removal, segregation and disposition of SRMs into their HACCP plans or Sanitation SOPs or other prerequisite program (9 CFR 310.22(d)(1)).

The materials identified as SRMs in the FSIS SRM rule are the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia (DRG) of cattle 30 months of age and older, and the distal ileum of the small intestine and tonsils from all cattle (9 CFR 310.22(a)). FSIS designated these materials as SRMs because they have been found to contain BSE infectivity at some point during the disease incubation period. Furthermore, the Agency determined that SRMs should be declared as inedible because, as stated in the preamble to the SRM rule, they present a sufficient risk of exposing humans to the BSE agent so as to render them “unfit for human food” within the meaning of section 1(m)(3) of the adulteration provisions of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601(m)(3)). For a detailed explanation of FSIS’ rationale for designating these tissues as SRMs, including the supporting scientific studies, refer to the preamble to “*Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-ambulatory Disabled Cattle*.”

FSIS designated the distal ileum from all cattle as an SRM because, in cattle infected with BSE under experimental conditions, infectivity was confirmed in

the distal ileum in the early stages of the disease. To ensure effective removal of the distal ileum, FSIS requires that the entire small intestine be removed and disposed of as inedible (9 CFR 310.22(a)(3)). However, in the preamble to the SRM rule, FSIS noted that beef processors may be able to effectively remove the distal ileum from the rest of the small intestine and requested comments on this issue (69 FR 1862, 1869).

On July 14, 2004, the Food and Drug Administration (FDA) issued an interim final rule, "*Use of Materials Derived From Cattle in Human Food and Cosmetics*" (also referred to as "the FDA rule" or "the prohibited cattle materials rule"), that extends the measures to prevent human exposure to the BSE agent issued by FSIS to FDA-regulated human food and cosmetics (69 FR 42255). In its rule, FDA designates certain materials from cattle as "prohibited cattle materials" and prohibits the use of such materials for human food, including dietary supplements, and cosmetics (21 CFR 189.5 and 21 CFR 700.27). Among the materials designated as prohibited cattle materials by the FDA are SRMs, the small intestine from all cattle, and material from cattle not inspected and passed for human consumption. Materials that were designated as SRMs in the FDA rule are the same as the materials designated as SRMs by FSIS.

Although FDA designated the distal ileum of the small intestine from cattle as an SRM, like FSIS, it prohibits the use of the entire small intestine for human food. Consistent with the amendments to the SRM interim final rule that FSIS is issuing in this document, FDA intends to issue an amendment to its prohibited cattle materials rule to permit, under certain circumstances, the manufacture and use of beef casings derived from beef small intestine, excluding the distal ileum, for human food and cosmetics.

Comments Received on Procedures for Removal of the Distal Ileum

In response to the SRM rule, FSIS received several comments from beef processors, the natural casing industry, the beef by-product industry, and importers and exporters of natural casings and beef by-products on the need to exclude the entire small intestine from the human food supply. On July 14, 2004, APHIS, FSIS, and the Food and Drug Administration (FDA) issued an Advance Notice of Proposed Rulemaking (ANPR), "*Federal Measures To Mitigate BSE Risks: Considerations for Further Action*," (also referred to as the APHIS/FSIS/FDA ANPR) that

provided another opportunity for interested parties to comment on which portions of the intestine of cattle should be removed to prevent potentially infective material from entering the human food supply (69 FR 42287, 42296). The comment period for the APHIS/FSIS/FDA ANPR closed on September 13, 2004.

Most of the comments submitted to the Agency on this issue requested that FSIS amend the SRM rule to require the removal and disposal of only the distal ileum and allow the remaining portion of the small intestine to be used for human food. As stated by the commenters, infectivity has been confirmed only in the distal ileum of the small intestine of cattle infected with BSE under experimental conditions, and the technology exists to effectively remove the distal ileum from the rest of the small intestine. The commenters noted that, before the issuance of the SRM rule, FSIS had approved a standard operating procedure to certify the removal of the distal ileum from the remaining portions of beef small intestine intended for export to Japan. As stated by the commenters, the procedure approved by FSIS requires the removal of at least 80 inches of the small intestine as measured from the junction of the ileum and the cecum.

To further support their argument, several commenters provided a detailed anatomical description of the small intestine of cattle, along with pictures and diagrams of the anatomy of the small intestine, which they asserted can be used to develop a model of certification of the removal and disposal of the distal ileum. According to the commenters, this description was developed with full scientific oversight and has widespread support within the beef processing, casing, and beef by-product industry.

Many commenters also described, in detail, examples of verifiable procedures for the effective removal of the distal ileum. One procedure described in the comments begins with the removal of the small intestine from the abomasum. Under this procedure, the small intestine is separated from the cecum at the ileocecal orifice, and the ileum is separated from the jejunum at the flange. According to the commenters, the resulting portion that contains the distal ileum would measure 36 to 72 inches in length depending on the age and size of the animal.

Another procedure described in the comments also begins with removal of the small intestine from the abomasum, except that under this procedure the small intestine remains attached to the cecum, and the separation is made at a

point 36 to 80 inches from the cecum, leaving behind the remaining edible portions of the small intestine. According to the commenters, leaving the ileum attached to the cecum at this initial stage provides an easily verifiable point of reference for on-line inspectors. The next step in this procedure is to separate the 36 to 80 inch portion of the intestine that contains the ileum from the cecum at the ileocecal orifice, leaving the cecum and the large intestine for edible use.

Another commenter described a procedure that uses a "Small Intestine Processing Machine" that was developed in Japan approximately 10 years ago specifically for the harvest of the jejunum of the intestine for export to Japan. As presented by the commenter, the Small Intestine Processing Machine strips the fat from, washes, and then splits the jejunum lengthwise, and cuts the small intestine into sections without leaving any part of the distal ileum attached. The commenter stated that the harvest procedures using the Small Intestine Processing Machine require that the uncoiled and untrimmed jejunum portion of the small intestine be cut at least 72 cm or 30 inches from the cecum end of the small intestine, which is equal to approximately 80 inches of the split, washed, and trimmed small intestine. According to the commenter, this removal procedure exceeds the total length of the distal ileum of the small intestine and includes a portion of the jejunum as a precaution.

This same commenter stated that the harvest procedures for the Small Intestine Processing Machine require that the entire intestinal tract of the digestive system be laid out in full view prior to starting the separation process, which makes accurate identification and removal of the distal ileum possible. The commenter provided pictures depicting the location of the distal ileum, cecum, and jejunum portions of the small intestine and noted that as the distal ileum joins the cecum, it is distinct from the jejunum, duodenum, and colon. The commenter also explained that as the separation of the jejunum (small intestine) is done by the Small Intestine Processing Machine, the harvest is only completed between the initial cut on the cecum end and the final cut adjacent to the duodenal jejunal flexure.

Several commenters indicated that because of the distinct shape of the distal ileum of cattle, FSIS inspection program personnel could easily verify the effective removal of this portion of the small intestine. Furthermore, commenters from the natural casing

industry stated that because of its physical properties, particularly the fact that it has no curve and an irregular thick surface, the distal ileum is not useable as a natural casing for sausage products. Thus, these commenters noted, many slaughter establishments in the United States and Canada had a policy of removing the distal ileum from all cattle at the time of slaughter prior to the effective date of the SRM rule.

Furthermore, as stated by the commenters, prior to the effective date of the SRM rule, slaughter establishments in Brazil, Argentina, and Uruguay, the three countries that are the major exporters of natural casings to the United States, had all been able to certify the removal of the distal ileum using achievable standards when requested to do so by their U.S. customers. One commenter submitted a CD-ROM on "Details of Beef Casing Production in Brazil: Eliminating the Distal Ileum," which, according to the commenter, demonstrates the distinct appearance of the bovine ileum. The commenters also noted that Brazil, Uruguay, and Argentina are countries that are generally recognized as having a negligible BSE risk by the international community.

Other Comments on Removal of the Small Intestine

In addition to the comments that presented procedures for removing the distal ileum, FSIS received other comments on whether the entire small intestine from cattle should be excluded from the human food supply. Some commenters, including members of the natural casing industry, importers and exporters of natural casings and beef by-products, and foreign countries that consider themselves to be "BSE-free," such as Australia, New Zealand, Uruguay, and Argentina, suggested that FSIS consider a country's BSE risk status when determining which portions of the intestine, if any, should be removed and disposed of as inedible. Most of these commenters also requested that FSIS exempt countries recognized as "BSE-free" or "provisionally free" by the international community from all provisions of the SRM rule.¹

According to the commenters, a country's BSE-free risk status provides the same level of protection from human exposure to the BSE agent as does exclusion of SRMs and beef small

intestine from the human food supply in the United States. In addition, as noted by the commenters, such an approach would be consistent with guidelines established by the World Organization for Animal Health (the OIE), which recommend that countries restrict the importation of beef small intestines and other potentially infective materials on the basis of the BSE risk classification of the region of origin.

FSIS' regulations governing the importation of meat and meat products from foreign countries into the United States prohibit the importation of any product that is adulterated or misbranded, or that does not comply with the regulatory requirements that would apply to it if it were a domestic product (9 CFR 327.3(a)). The FSIS import regulations at 9 CFR 327.4(a) also require that fresh meat or fresh meat by-products consigned to the United States from a foreign country be accompanied by a foreign meat inspection certificate, signed by the official authorized by the national foreign government to issue inspection certificates for meat and meat by-products exported to the United States, that certifies, among other things, that such products are not adulterated or misbranded, and that such products have been handled in a sanitary manner and are otherwise in compliance with requirements equivalent to those in the FMIA and its implementing regulations. The regulations, 9 CFR 327.3(a) and 9 CFR 327.4(a), make clear that to be eligible for importation into the United States, meat products from foreign countries must present no greater risk to human health than products that were produced domestically in the United States, and that to achieve the appropriate level of public health protection, such products must comply with regulatory requirements equivalent to those required by FSIS.

Thus, if FSIS were to exempt countries with a BSE-free risk status (or negligible BSE risk under OIE guidelines) from some or all of the provisions of the SRM rule, as requested by some of the commenters, any products eligible for importation into the United States would be required to comply with 9 CFR 327.3(a) and 9 CFR 327.4(a), *i.e.*, they could not be adulterated or misbranded, and would be required to comply with requirements that are equivalent to those in the FSIS SRM rule. As stated above, in response to the confirmation of BSE in the cow in Washington State, FSIS currently considers the distal ileum and all other SRMs from U.S. domestic cattle as adulterated under section 1(m)(3) of the FMIA. The

Agency is evaluating whether it is appropriate to consider these materials adulterated if they originate from a country considered to have a BSE-free risk status. Until FSIS has an opportunity to resolve this issue, the Agency has decided that all materials designated as SRMs, including the distal ileum, should be excluded from the human food supply, regardless of their country-of-origin. FSIS will continue to evaluate the issue, and if the Agency determines that an exemption is appropriate for countries considered to have a BSE-free risk status or negligible BSE risk under OIE guidelines, the Agency will take appropriate action.

Other commenters, including a private consultant, consumer advocacy organization, and members of the restaurant industry, recommended that FSIS expand the prohibition on the use of small intestine from cattle for human food to include the entire intestine, both large and small. Some of these comments noted that while certain sections of the intestine were tested with no infectivity, not every section of the intestine was subjected to the bioassay in the pathogenesis studies conducted in the United Kingdom. One comment asserted that instead of assuming that the untested section of the intestine are devoid of infectivity, FSIS should err on the side of caution when it comes to protecting public health.

Some comments, one of them citing an unpublished study, mentioned that positive immunostaining has been identified along the length of the intestine, providing evidence for the entire intestine to be considered SRM under European Union regulations. To better understand the implications of this finding FSIS contacted the commenter to obtain more information on the study. The commenter explained that the statement that positive immunostaining has been identified along the length of the intestine was based on a misunderstanding of a report on a published study.

The commenter clarified that there are published studies in which positive immunostaining has been identified in the distal ileum portion of the enteric nervous system (ENS) of naturally infected and experimentally challenged cattle with BSE. However, the commenter maintained that FSIS should designate the entire intestine, both large and small, as SRM because the ENS runs through the length of the intestinal tract and other areas of the ENS from naturally occurring cases of BSE have not yet been examined for infectious prion staining. Thus, stated the commenter, if other areas of the

¹ The international guidelines established by the OIE have been revised since FSIS issued the SRM interim final rule. The OIE guidelines in the 2005 Terrestrial Animal Health Code provide for a BSE "negligible risk" category instead of the "BSE-free" and "provisionally free" categories.

intestinal tract were subjected to immunostaining, one might expect to find positive immunostaining in portions of the intestinal tract other than the distal ileum. The commenter also noted that, although immunostaining was attempted and found negative on sections of the intestine other than the distal ileum of experimentally challenged cattle, this study was extremely limited with regard to the testing of tissues other than the distal ileum (*i.e.*, tissues from 3 calves sacrificed 6 months post-exposure).

Also, as stated by the comments, according to the E.U. Scientific Steering Committee (SSC), intestine should be SRM because infection from BSE comes from ingesting contaminated feed and slaughterhouse contamination of other intestinal areas with matter from the ileum cannot be avoided. Many of the comments also noted that the International Review Team (IRT) appointed by the Secretary of Agriculture in January 2004 to assess the U.S. Government's response to the detection of BSE in the cow in Washington State recommended that the SRM definition be adjusted to include the entire intestine, from pylorus to anus, of all cattle.

After considering these comments, FSIS has not changed its conclusion that, when the distal ileum is effectively removed, beef small intestine that complies with the requirements of this interim final rule presents no greater risk of introducing the BSE agent into the human food supply than do other beef products permitted for use as human food in the United States. As discussed below, this conclusion is based on the information available to the Agency with regard to BSE infectivity in the intestine of cattle, together with the availability of procedures to effectively remove the distal ileum.

FSIS is not aware of any studies in which BSE infectivity has been confirmed in any portion of the intestinal tract of cattle other than the distal ileum. The animal studies of TSEs that indicate infectivity along the entire intestinal tract that the Agency is aware of involve animal species other than cattle (Ref. 1–6, available for viewing by the public in the FSIS docket room). Although the data on TSEs in other animal species may represent the distribution of infectivity in those species, these data may not represent the distribution of infectivity in cattle as evidenced by the studies discussed below.

The Agency recognizes that, based on the structure and function of cells that make up the gastrointestinal tract of

mammals, many areas within the mammalian gastrointestinal tract could theoretically be capable of harboring abnormal prions. TSE infectious agents that enter susceptible animals through oral consumption of infectious material appear to gain access to the CNS through the nerves that innervate the gastrointestinal tract. Infection may involve a first step of presentation to lymphatic tissues and may also occur by direct invasion of nerve endings in the intestinal mucosa (Ref. 7, available for viewing by the public in the FSIS docket room). Both gut-associated lymphoid tissue (GALT) and ENS tissue are present throughout the intestinal tract.

However, despite this theoretical risk, the only bovine GALT found to be positive for BSE infectivity thus far has been in the Peyers Patches of the distal ileum of calves infected with BSE under experimental conditions. Two other GALT tissues from natural field cases, spleen and mesenteric lymph nodes, have been subjected to mouse bioassays and found to be non-infectious (Ref. 8, available for viewing by the public in the FSIS docket room). Spleen and mesenteric lymph node samples from experimentally dosed calves have also been subjected to mouse bioassays with similar results.

A component of the ENS is the myenteric plexus that courses within the length of the intestinal wall (Ref. 9, available for viewing by the public in the FSIS docket room). Distal ileum sections of the intestine from cattle that acquired natural field cases of BSE have been examined for the presence of abnormal prion protein through immunostaining, and the ganglion cells of the myenteric plexus were found to contain abnormal prions in 9 out of 29 samples (Ref. 10, available for viewing by the public in the FSIS docket room). Other areas of the ENS system from naturally occurring cases of BSE have not yet been examined for abnormal prion protein through immunostaining.

Gastrointestinal tissue from BSE field cases were subjected to and found non-infective by mouse bioassay include a sample of the splanchnic nerve, as well as samples of rumen, omasum abomasum, proximal small intestine, distal small intestine, proximal colon, distal colon, and rectum (Ref. 8, available for viewing by the public in the FSIS docket room). From the U.K. pathogenesis studies, in which calves were orally dosed with BSE-infectious materials, samples of rumen, omasum, abomasum, duodenum, and spiral colon were found to be non-infective by mouse bioassay (Ref. 11, available for viewing by the public in the FSIS

docket room). None of these samples have been subjected to a cattle bioassay.

FSIS is aware of one small experiment in which immunostaining was attempted on gastrointestinal tissue outside of distal ileum. The study involved three calves that were orally infected with the BSE agent and sacrificed six months later. In the study, immunostaining was negative in all locations tested except for the Peyers Patches of the distal ileum (Ref. 10, available for viewing by the public in the FSIS docket room).

When it issued the SRM interim final rule, FSIS acknowledged that available data on the development and distribution of tissue infectivity in BSE infected cattle are incomplete and that additional studies using cattle bioassays were being conducted to ensure that low levels of infectivity that may not have been detected using mouse bioassays are not missed (69 FR 1862, 1864–1865, January 12, 2005). However, on the basis of the findings described above, FSIS has concluded that bovine intestinal tissues other than the distal ileum are either unlikely to contain BSE infectivity or contain infectivity below the level of detection using the mouse bioassay. Furthermore, FSIS has also concluded that, due to the availability of procedures to remove the distal ileum, the fact that infectivity has been confirmed only in the distal ileum has the most significant implications for human health.

Thus, FSIS has determined that designating the distal ileum as SRM is a prudent and appropriate measure to prevent human exposure to the BSE agent in the United States. The Agency has also determined that it is not necessary to designate the entire small intestine or the large intestine as an SRM.

Future research that has been recommended by the European SSC includes cattle bioassay and more sensitive prion detection testing of many of the cattle tissues described above (Ref. 12, available for viewing by the public in the FSIS docket room). Stored tissue is available for this purpose in the United Kingdom. A pathogenesis study underway in Germany will also provide tissue from cattle incubating BSE for more definitive testing (Ref. 13, available for viewing by the public in the FSIS docket room).

The Agency supports the need for the research being conducted with regard to BSE and other TSEs. On March 18, 2005, the Secretary of Agriculture announced that almost \$2 million in funding has been redirected to enhance research on BSE (“Johanns Announces

Expansion of BSE Research Program and Research Initiative to Improve Food Safety," USDA press release no. 0097.05, March 18, 2005). The BSE research funds, redirected by USDA's Agricultural Research Service, will be used for newly funded BSE projects and facilities. Many of these newly funded projects involve international collaboration with researchers from the United Kingdom and other European countries. While FSIS believes that the primary tissues of concern for spreading the BSE agent have been identified, the Agency will use the results of futures studies on BSE to further refine this determination and inform its policies with regard to BSE.

FSIS disagrees with the comment that slaughterhouse contamination of other intestinal areas with matter from the ileum cannot be avoided. As discussed earlier in this document, the FSIS SRM interim final rule requires that establishments develop, implement, and maintain written procedures for the removal, segregation, and disposition of SRMs, and that they incorporate these procedures into their HACCP plans, Sanitation SOPs or other prerequisite programs (9 CFR 310.22(d)(1)). These procedures must ensure that all SRMs, including the distal ileum, are completely removed from the carcass, segregated from edible products, and disposed of in an appropriate manner as prescribed by 9 CFR 314.1 and 9 CFR 314.3 (*i.e.*, used for inedible rendering, incinerated, or denatured). FSIS is responsible for ensuring the adequacy and effectiveness of the establishment's procedures.

As stated throughout this document, FSIS has determined that beef processors have the technology to effectively remove the distal ileum from the intestine of cattle. Thus, the Agency has concluded that when establishments incorporate their technologies for removing the distal ileum into their HACCP plan or Sanitation SOP or other prerequisite program, they will be able to effectively remove the distal ileum in a manner that does not contaminate edible materials.

Amendments to SRM Interim Final Rule

After carefully evaluating this issue and the comments submitted on the removal of the distal ileum, including the anatomical descriptions and diagrams of the bovine small intestine, as well as the detailed descriptions of the procedures for removal of the distal ileum, FSIS has concluded that processors have the technology to effectively remove the distal ileum from the rest of the small intestine. Therefore,

FSIS is amending the SRM interim final rule to permit for use as human food beef small intestine, excluding the distal ileum, derived from cattle slaughtered in official U.S. establishments or in certified foreign establishments in countries listed by FSIS in 9 CFR 327.2(b) as eligible to export meat products to the United States.² This is a requirement that all meat and meat food products must comply with to be eligible for use as human food in the United States. In addition, FSIS will not permit natural casings derived from beef small intestine, excluding the distal ileum, to be used as containers of meat food products unless the casings are derived from cattle that have been inspected and passed in an official U.S. establishment or in a certified foreign establishment.

9 CFR 327.1(b) of FSIS' import regulations provides that compliance with the conditions of importation under FSIS' regulations does not excuse the need for compliance with applicable requirements under other laws, including the provisions in 9 CFR parts 94, 95, and 96 of APHIS' regulations. Thus, under the amendments to the SRM interim final rule described in this document, beef small intestine derived from cattle that have been in countries listed by APHIS in 9 CFR 94.18(a) as regions that present a risk of introducing BSE into the United States will continue to be subject to importation restrictions established by APHIS. APHIS' regulations at 9 CFR parts 94, 95, and 96 prohibit or restrict the importation of beef products and by-products, as well as casings (except stomachs), from cattle that have been in any of the regions listed by APHIS in 94.18(a). FSIS and APHIS work closely together to ensure that meat and meat products imported into the United States comply with the regulatory requirements of both agencies. FSIS and APHIS will continue to work together to ensure that the agencies maintain a consistent policy with regard to the importation of beef small intestines.

The amendments to the interim final rule also require that establishments that process beef small intestine for human food have in place procedures to ensure that the distal ileum is effectively removed. As provided in 9 CFR 310.22(d)(1), the establishment

must incorporate these procedures into its HACCP plan or Sanitation SOPs or other prerequisite program. FSIS has concluded that procedures that require removal of at least 80 inches of the uncoiled and trimmed small intestine as measured from the ceco-colic junction and progressing proximally towards the jejunum comply with this requirement. The Agency believes that this standard is sufficiently conservative to ensure removal of the distal ileum despite differences in length of the intestinal tract or its segments between breeds or variations from animal to animal of the same breed. However, establishments may propose alternative standards if they can demonstrate that such standards are as effective as the standards described above in ensuring that the entire distal ileum is completely removed.

APHIS' regulations prohibit or restrict the importation of most ruminants and ruminant products, including beef intestines and casings, from countries listed by APHIS as presenting a risk of introducing BSE into the United States. As discussed above, to be eligible for importation under FSIS' regulations, beef small intestine must comply with both FSIS' and APHIS' import regulations.

Jurisdiction

Under section 1(j) of the FMIA, products from cattle that contain meat or other portions of the carcass only in a relatively small proportion or that historically have not been considered by consumers as products of the meat food industry are not considered "meat food products" subject to regulation by FSIS (21 U.S.C. 601(j)). Thus, while unprocessed bovine small intestine is regulated by FSIS as a meat food product, stripped and cleaned casings derived from the small intestine of cattle have historically been regulated by FDA.

As discussed above, FSIS has decided to permit for use as human food beef small intestine, excluding the distal ileum, derived from cattle slaughtered in official U.S. establishments or in certified establishments in foreign countries that FSIS considers eligible to export meat and meat products to the United States. However, because the amendments to the SRM interim final rule described in this document are not intended to affect the regulatory authority of either FSIS or FDA, jurisdiction over a product derived from small intestine will continue to depend on whether the product is considered a meat food product as defined in the FMIA. Thus, unprocessed beef small intestine will continue to be regulated

² Once a country is listed in 9 CFR 327.2(b) as eligible to export meat and meat products to the United States, it must maintain a meat inspection system that is equivalent to that of the United States. If it does not, FSIS will not permit meat products from that country to be imported into the United States. FSIS conducts audits of eligible foreign countries meat inspection systems at least annually.

by FSIS, and stripped and cleaned natural casing derived from bovine small intestine will continue to be regulated by FDA.

However, although they are regulated by FDA, natural beef casings are used as containers for certain meat food products. Therefore, before FSIS applies the mark of inspection to a meat food product encased in a natural beef casing derived from the small intestine, the Agency will require that the establishment provide documentation that demonstrates that the small intestine from which the casing was derived complies with the requirements in the amendments to the SRM interim final rule.

Small Business Considerations

One of the reasons that FSIS is at this time issuing these amendments to the SRM interim final rule to allow the use of beef small intestine, excluding the distal ileum, for human food is that the Agency has received several comments in response to the SRM rule and the APHIS/FSIS/FDA ANPR from small companies that manufacture sausages and other products encased in natural beef casings, as well as from manufacturers of ethnic foods, that indicate that the prohibition on the use of the entire small intestine for human food is having an adverse economic impact on small and very small businesses. As noted by the commenters, beef round casings, which are derived from the small intestine of cattle, are used in a wide assortment of sausage products, as well as in specialty sausages. The commenters stated that processors can substitute collagen casing for some types of sausage made from natural beef rounds, but this generally results in a lower quality product with a decreased market value.

Although some companies had stocks of natural casings from cattle slaughtered prior to January 12, 2004, the date that the SRM interim final rule went into effect, these companies have informed FSIS that their existing supplies of natural beef casings will soon be exhausted. Permitting the use of beef small intestine, excluding the distal ileum, will relieve some of the economic burden that the prohibition on the use of the entire small intestine for human food has imposed on these small entities.

Summary of the Amendments

As discussed above, FSIS is amending the SRM interim final rule to permit, under certain conditions, the use of beef small intestine, excluding the distal ileum, for human food. As amended, 9 CFR 310.22(a)(3) will no longer require

that establishments remove the entire small intestine of all cattle and dispose of it as inedible. Instead, it will specify the conditions under which the small intestine from cattle is permitted to be used for human food. These conditions were described in detail earlier in this document.

The regulations in 9 CFR 318.6(b)(1) provide that casings from cattle may be used as containers of products provided the casings are not derived from the small intestine. FSIS is amending paragraph (b)(1) to permit casings from cattle that are derived from the small intestine to be used as containers if the small intestine complies with the requirements in 9 CFR 310.22(a)(3) as amended. The amendments to paragraph (b)(1) also require that establishments that use casings derived from the small intestine of cattle as containers for products demonstrate, through documentation, that the small intestine from which the casing was derived complies with the requirements in 9 CFR 310.22(a)(3) as amended.

9 CFR 318.6(b)(8) prohibits small intestine from cattle for use in any meat food product or for edible rendering. FSIS is amending paragraph (b)(8) to permit small intestine from cattle to be used in a meat food product or for edible rendering if it complies with the requirements in 9 CFR 310.22(a)(3) as amended.

Effective Date and Opportunity for Public Comment

Because FSIS has already provided the public with opportunities to comment on the issues raised in this document (once in response to the SRM interim final rule published on January 12, 2004 and again in response to the APHIS/FSIS/FDA ANPR published on July 14, 2004), and because the restrictions on the use of the small intestine for human food are adversely affecting small businesses without providing any public health benefits, the amendments to the SRM interim final contained in this document will become effective before the comment period closes. FSIS will consider any comments received during the comment period for this amended interim final rule (see DATES above). After that comment period closes, the Agency will publish another document in the **Federal Register**. The document will include a discussion of all comments received in response to the SRM interim final rule, the APHIS/FSIS/FDA ANPR, and the amendments to the SRM interim final rule described in this document. It will also include any amendments to the SRM interim final rule made as a result of those comments.

Executive Order 12866 and Regulatory Flexibility Act

These amendments to the January 12, 2004 interim final rule have been determined to be significant and therefore, have been reviewed by the Office of Management and Budget.

The interim final rule of January 12, 2004 (69 FR 1862) included a Preliminary Regulatory Impact Analysis (PRIA) that was made available for comment on April 7, 2004 (69 FR 18245). The PRIA indicated that benefits of the SRM interim final rule were primarily those resulting from the reduction in human exposure to BSE infectivity and the restoration of beef exports. The PRIA estimated that designating beef small intestines, including the distal ileum, from cattle of all ages as a specified risk material did not result in a significant reduction in potential human exposure to BSE. As discussed elsewhere in this document, the distal ileum was designated as an SRM because BSE infectivity has been demonstrated in the distal ileum after oral exposure to the BSE agent. Although BSE infectivity was not demonstrated in the remaining part of the small intestine, the interim final rule required the removal of the entire small intestine to ensure effective removal of the distal ileum. Therefore, this action does not change the reduction in human exposure to BSE estimated in the PRIA.

The effect of amending the SRM interim final rule would be to increase the supplies of beef small intestines and beef natural casings manufactured from beef small intestine (beef casings) that do not contain the distal ileum, and that, prior to the implementation of the SRM rule, were used for human food. Although the SRM interim final rule designated the distal ileum of all cattle as an SRM, to ensure effective removal of the distal ileum, it required that the entire small intestine be removed and disposed of as inedible. Thus, as a result of the SRM rule, the supplies of beef small intestine and natural casings derived from beef small intestine produced after the effective date of the SRM rule were prohibited for use as human food.

One of the impacts on consumers of this prohibition of the use of beef small intestine for human food has been the loss of food products in marketplaces where the only suitable casings are beef casings. These types of food products that typically use beef casings include sausages such as salami, hard salami, thuringer, European-type sausages such as braunschweiger, metwurst, and supressa, basterma, and Arabic sausages, some patés, and a variety of

other food products largely sold in ethnic markets. Suitable substitutes for beef casings do not exist or are generally inadequate for some of these types of food products. For example, cellulosic, collagen, fibrous, muslin or synthetic casings, or hog or sheep casings are, in many cases, not adequate substitutes for beef natural casings for use in producing some sausages, or some types of traditional ethnic products. Another impact on consumers of this prohibition has been the loss of food products in ethnic marketplaces where beef small intestines were sold as variety meats, or food products were sold that used beef small intestines as an ingredient of manufactured food products or edible rendered food products. Suitable substitutes for beef small intestines as variety meats do not exist or are generally inadequate for some of these types of products.

The PRIA of the SRM interim final rule estimated that approximately 160 million pounds of small intestines, including the distal ileum, were removed from the human food supply. The net revenue lost by excluding the entire small intestine from the food supply, was estimated to be an average of \$27.6 million (\$20.6 to \$34.5 million) per year for the food industry, after the implementation of the rule. Of the \$27.6 million in net annual revenue lost as a result of the interim final rule, the PRIA estimated that an average of \$16.6 million (\$13.0 to \$20.6 million) resulted from exclusion of the distal ileum and an average of \$10.9 million from the remaining parts of the small intestine (see page 24 of the analysis). Therefore, this action is estimated to restore an average of \$10.9 million (\$2.9 to \$19.0 million) in net revenues lost as a result of the interim final rule.

In the PRIA, the Agency estimated, by survey, that approximately 47 federally-inspected establishments, that were primarily large establishments, were affected by the value lost of beef small intestines that were used for food products and to manufacture beef casing. The amendment would allow some of these 47 establishments to resume their sales of beef small intestines, beef casing, and food products that use the imported beef casings. Thus, some of the 47 establishments or firms are expected to recover some of the value lost through these new sales because of the amendment. The Agency is unable to estimate the number of establishments that would resume the sales of beef small intestines and their associated food products.

Also, the Agency is unable to estimate the number of establishments that used

beef casings in the production of meat products prior to the implementation of the SRM interim final rule in January of 2004. However, it believes that the number of domestic establishments producing such products was small. As discussed elsewhere in this document, the Agency has received comments from small companies that indicate that the prohibition on the use of the entire small intestine for human food is having an adverse economic impact on some small and very small businesses. Most of these commenters are manufacturers of meat food products encased in natural beef casing. These amendments will help to relieve some of this economic burden. However, FSIS is unable to determine the number of small entities that will benefit from this action.

The economic impact of the measure on manufacturers of casings produced from other sources is not significant. The availability of natural beef casings may reduce the demand for some cellulosic, collagen, synthetic, or other types of casings. However, the reduction is not expected to be significant, given the long-term trend in the use of these types of non-natural casings.

Therefore, the Agency has determined that these amendments to the interim final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

The PRIA estimated that the SRM interim final rule would have a minimal impact on U.S. meat production and beef prices paid by consumers, because these products are a very small amount of total beef production. Therefore, allowing the small intestine, excluding the distal ileum, for use as human food as provided in this action will not have a significant impact on the food industry and consumers.

The availability of these types of casing will reduce the demand for some cellulosic, collagen, synthetic, or other types of casings. However, the reduction is not expected to be significant, given the long-term trend in the use of these types of non-natural casings.

Executive Order 12988

This amendment to the SRM interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. In this interim final rule: (1) All state and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Requirements

The SRM interim final rule included a paperwork analysis (61 FR 38862) prepared in accordance with the Paperwork Reduction Act. FSIS has determined that the corrections and amendments in this rule do not change any information collection burden hours.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this amended interim final rule, FSIS will announce it on-line through the FSIS Web page located at http://www.fsis.usda.gov/regulations_&_policies/2005_Interim_&_Final_Rules_Index/index.asp. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at <http://www.regulations.gov/>.

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

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at http://www.fsis.usda.gov/news_and_events/email_subscription/

and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves and have the option to password protect their account.

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List of Subjects

9 CFR Part 310
 Animal diseases, Disposition of carcasses, Meat inspection, and Post-mortem inspection.

9 CFR Part 318
 Entry into official establishments, Food packaging, Meat inspection, Reinspection and preparation of products.

■ For the reasons discussed in the preamble, FSIS is amending 9 CFR Chapter III as follows:

PART 310—POST-MORTEM INSPECTION

- 1. The authority citation for part 310 continues to read as follows:
Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.
- 2. Paragraph (a)(3) of § 310.22 is amended by removing the second sentence and adding the following sentence and paragraphs (a)(3)(i) and (ii) in its place:

§ 310.22 Specified risk materials from cattle and their handling and disposition.

- (a) * * *
- (3) * * * The small intestine may be used for human food if:
 - (i) It is derived from cattle that were inspected and passed in an official establishment in the United States or in a certified foreign establishment in a country listed in 9 CFR 327.2(b) as eligible to export meat and meat products to the United States and it is

otherwise eligible for importation under 9 CFR 327.1(b), and

- (ii) The distal ileum is removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine as measured from the ceco-colic junction and progressing proximally towards the jejunum or by a procedure that the establishment demonstrates is effective in ensuring complete removal of the distal ileum.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

- 3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 38F, 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

- 4. Section 318.6 is amended to revise paragraphs (b)(1) and (b)(8) to read as follows:

§ 318.6 Requirements concerning ingredients and other articles used in preparation of products.

* * * * *

(b)(1) The only animal casings that may be used as containers of product are those from sheep, swine, or goats. Casings from cattle may be used as containers of products. However, if casings from cattle are derived from the small intestine, the small intestine must comply with the requirements in 9 CFR 310.22(a)(3). Establishments that use casings derived from the small intestine of cattle as containers for products must demonstrate, through documentation, that the small intestine from which the casing was derived complies with the requirements in 9 CFR 310.22(a)(3).

* * * * *

(8) Intestines shall not be used as ingredients in any meat food product for which a standard is prescribed in part 319 of this subchapter and shall not be used in other products unless the products are labeled in accordance with § 317.8(b)(3) of this subchapter. When small intestine from cattle is used in a meat food product or for edible rendering, it must comply with the requirements in 9 CFR 310.22(a)(3).

* * * * *

Done at Washington, DC on: September 1, 2005.

Barbara J. Masters,
Administrator.

[FR Doc. 05–17683 Filed 9–6–05; 8:45 am]

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

[Docket No. FAA-2005-22291; Directorate Identifier 2005-NM-038-AD; Amendment 39-14251; AD 2005-18-11]

RIN 2120-AA64

Airworthiness Directives; Airbus Model A340-200 and A340-300 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A340-200 and A340-300 series airplanes. This AD requires a one-time inspection for discrepancies of the spotfacing for the pylon-to-engine attachment bolts on the pyramid forward fitting of the engine pylon, and repair if necessary. This AD results from a report that, during a routine inspection, it was found that the diameter of the spotfacings was too small for two of the pylon-to-engine attachment bolts on the pyramid forward fitting. We are issuing this AD to prevent reduced structural integrity of the pylon-to-engine attachment bolts on the pyramid forward fitting, which could result in separation of an engine from the airplane.

DATES: This AD becomes effective September 22, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 22, 2005.

We must receive comments on this AD by November 7, 2005.

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

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this 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:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A340-200 and A340-300 series airplanes. The DGAC advises that, during a routine inspection, it was found that the diameter of the spotfacings was too small for two of the pylon-to-engine attachment bolts on the pyramid forward fitting. Investigation revealed that, because the diameter of the spotfacings on the two front fasteners was incorrect, the bolt head did not fit correctly on the flat part of the spotfacing, causing possible damage of the spotfacing area and cracking/wear of the pylon-to-engine attachment bolt. This condition, if not corrected, could result in separation of an engine from the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A340-54-4009, including Appendix 01, Revision 01, dated February 15, 2005. The service bulletin describes procedures for a one-time inspection for discrepancies of the spotfacing for the pylon-to-engine attachment bolts on the pyramid forward fitting of the engine pylon, and repair if necessary. The discrepancies include incorrect dimensions of the spotfacing and misalignment of the bolt. The repair involves measuring and machining the spotfacing to the correct dimension and installing new bolts and washers. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F-2005-011, dated January 19, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This 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 we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent reduced structural integrity of the pylon-to-engine attachment bolts on the pyramid forward fitting, which could result in separation of an engine from the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between the AD and Service Bulletin."

Difference Between the AD and Service Bulletin

Airbus Service Bulletin A340-54-4009 recommends concurrently accomplishing Airbus Service Bulletin A340-71-4001, or the equivalent production modification. The equivalent production modification has been done on the airplanes specified in the applicability of this AD. Additionally, the French airworthiness directive does not mandate accomplishment of the concurrent service bulletin. In light of these factors, this AD would not require accomplishing the concurrent service bulletin.

Costs of Compliance

None of the airplanes affected by this action are on the U.S. Register. All airplanes affected by this AD are currently operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, we consider this AD necessary to ensure that the unsafe condition is addressed if any affected airplane is imported and placed on the U.S. Register in the future.

If an affected airplane is imported and placed on the U.S. Register in the future, the required inspection 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 inspection would be \$65 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is

unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include "Docket No. FAA-2005-22291; Directorate Identifier 2005-NM-038-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701,

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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):

2005-18-11 Airbus: Amendment 39-14251. Docket No. FAA-2005-22291; Directorate Identifier 2005-NM-038-AD.

Effective Date

(a) This AD becomes effective September 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340-211, -212, and -213, and A340-311, -312, and -313 airplanes; certificated in any category; as identified in Airbus Service Bulletin A340-54-4009, Revision 01, dated February 15, 2005.

Unsafe Condition

(d) This AD results from a report that, during a routine inspection, it was found that the diameter of the spotfacings was too small for two of the pylon-to-engine attachment bolts on the pyramid forward fitting. The FAA is issuing this AD to prevent reduced structural integrity of the pylon-to-engine attachment bolts on the pyramid forward fitting, which could result in separation of an engine from the airplane.

Compliance

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

One-Time Inspection/Repair

(f) Within 18 months after the effective date of this AD: Perform a one-time detailed inspection for discrepancies of the spotfacing for the pylon-to-engine attachment bolts on the pyramid forward fitting of each engine pylon, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A340-54-4009, Revision 01, dated February 15, 2005. Repair any discrepancy before further flight in accordance with the service bulletin. Inspections and repairs accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A340-54-4009, dated August 25, 2004, are acceptable for compliance with this paragraph.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

No Reporting Requirement

(g) Although the referenced service bulletin describes procedures for submitting a report of inspection results to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(h) 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

(i) French airworthiness directive F-2005-011, dated January 19, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A340-54-4009, Revision 01, dated February 15, 2005, excluding Appendix 01, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, 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/cfr/ibr-locations.html>.

Issued in Renton, Washington, on August 29, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 05-17606 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2005-20352; Directorate Identifier 2004-NM-214-AD; Amendment 39-14249; AD 2005-18-09]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200 and -300 Series Airplanes and Model 767 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 757-200 and -300 series airplanes and Model 767 series airplanes. This AD requires replacing the existing operational software of the Pegasus flight management computer (FMC) system with new, improved operational software. This AD results from reports of "old" or expired air traffic control (ATC) clearance messages being displayed on the control display unit (CDU) of the FMC system during subsequent flights. We are issuing this

AD to prevent display of "old" or expired ATC clearance messages on the CDU of subsequent flights, which could result in the airplane entering unauthorized airspace or following a flight path that does not provide minimum separation requirements between aircraft, and a consequent near miss or a mid-air collision.

DATES: Effective October 12, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 12, 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, P.O. Box 3707, Seattle, Washington 98124-2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Samuel Slentz, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6483; fax (425) 917-6590.

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 Boeing Model 757-200 and -300 series airplanes and Model 767 series airplanes. That NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7676). That NPRM proposed to require replacing the existing operational software of the Pegasus flight management computer (FMC) system with new, improved operational software.

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.

Supportive or No Objection Comments for the NPRM

One commenter supports the NPRM, and another commenter advises that it has no objection to the NPRM.

Requests To Limit the Applicability of the NPRM

Several commenters request that the applicability of the NPRM be limited to those airplanes that have the Air Traffic Services Data Link (ATS DL) enabled. The commenters advise that Flight Management Computer (FMC) systems that are not equipped with the optional operational program configuration (OPC) software to enable the ATS DL will never display Air Traffic Control (ATC) clearance messages (new, old, or expired) on the control display unit (CDU). The commenters point out that without the OPC, there is not the capability to get ATC clearance messages on the CDU. Therefore, the commenters contend that the NPRM should be applicable only to those airplanes that have the ATS DL FMC option enabled. Additionally, one commenter, an operator, contends that if airplanes not using ATS DL FMC are required to upgrade the Pegasus FMC software, the operators also will be forced to upgrade their older inertial reference units (IRU) due to differences in the magnetic variation models between Pegasus 2003 and the older IRU models. The commenter explains that upgrading the IRU would be a significant increase in its costs.

The FAA agrees that the requirement to replace the OPS and FIDO software of the existing FMC with Pegasus 2003 OPS and FIDO software or Pegasus 2004 OPS and FIDO software should apply only to airplanes operating with an Air Traffic Services data link function enabled. We have revised paragraph (f) of this AD to clarify the applicability of that requirement.

Requests To Add Service Information

Several commenters, including the manufacturer, note that since the issuance of the NPRM, Boeing has issued new service bulletins that describe replacing the existing operational program software (OPS) and flight information and data output (FIDO) software of the FMC with Pegasus 2005 OPS and FIDO software. Accomplishment of the service bulletins is intended to correct certain problems that were experienced as a result of the installation of the Pegasus 2003 OPS and FIDO software, and to add other improvements on the map displays. The commenters request that the new service bulletins be added to the NPRM

as an optional method of compliance with the proposed requirements of the NPRM.

We agree with the commenters' request. We have reviewed the new service bulletins and have added them to paragraph (f) of the AD and new Table 2, Pegasus 2005 OPS and FIDO—Applicable Service Bulletins, of this AD as an optional method of compliance with the requirements of this AD.

Requests To Revise Paragraph (f) of the NPRM

Two commenters request that we clarify that the use of the onboard software media binder (SMB) is optional. The commenters note that the accomplishment instructions of the service bulletins referenced in the NPRM could be construed to create a regulatory requirement for the existence of the onboard SMB.

We agree with the commenters' request for the reason specified and have revised paragraph (f) of the AD to specify that replacing the existing OPS and FIDO diskettes in the software media binder is not required by this AD.

Requests To Approve Later Service Bulletins

Several commenters request that we revise the NPRM to permit use of future FAA-approved service bulletins to comply with the proposed requirements of the NPRM. The commenters contend that future FAA-approved service bulletins provide assurance that the software described in future bulletins would meet the required level of safety specified in the NPRM. Specifically, the commenters would like us to add the words, "or later approved versions."

We do not agree with the commenters' request. When referencing a specific service bulletin in an AD, using the phrase "or later FAA-approved revisions" in an AD would violate the Office of the Federal Register (OFR) regulations for approving materials that are incorporated by reference. In general terms, we are required by these OFR regulations to either publish the service document contents as part of the actual AD language, or submit the service document to the OFR for approval as "referenced" material, in which case we may only refer to such material in the text of an AD. The AD may refer to the service document only if the OFR has approved it for "incorporation by reference." To allow operators to use later revisions of a referenced document, we must either revise the AD to reference the specific later revisions, or operators may request approval to use later revisions as an alternative method of compliance (AMOC) with this AD.

Operators may request approval of an AMOC for this AD under the provisions of paragraph (h) of this AD.

Request To Revise the Costs of Compliance Section

One commenter, the manufacturer, requests that we revise the estimated number of airplanes affected from 857 in the worldwide fleet and 547 on the U.S. registry to 310 airplanes estimated for the worldwide fleet and 247 airplanes estimated for airplanes of U.S. registry.

We agree with the commenter. Based on our decision to clarify the applicability of the requirements of paragraph (f) of the AD, (reference the first comment discussion, "Request to Limit the Applicability of the NPRM"), we have revised the "Costs of Compliance" section of this AD to reflect the numbers specified by the commenter above.

Clarification of Error in Certain Boeing Service Bulletins

We noticed a typographical error in the effectivity of Boeing Service Bulletin 767-34-0472, dated March 17, 2005, and Boeing Alert Service Bulletin 767-34A0390, dated February 19, 2004. We have verified with the manufacturer that the effectivity of these service bulletins is intended to be for Model 767-400ER series airplanes rather than for 747-400ER series airplanes. Therefore, the applicability of this AD is correct and remains the same as the NPRM.

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 neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 310 airplanes of the affected design in the worldwide fleet. This AD will affect about 247 airplanes of U.S. registry. The required actions will take about 3 work hours per airplane, at an average labor rate of \$65 per work hour. The manufacturer will provide required parts to the operators at no cost. Based on these figures, the estimated cost of this AD for U.S. operators is \$48,165, or \$195 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 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):

2005-18-09 Boeing: Amendment 39-14249. Docket No. FAA-2005-20352; Directorate Identifier 2004-NM-214-AD.

Effective Date

(a) This AD becomes effective October 12, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757-200 and -300 series airplanes and Model

767-200, -300, -300F, and -400ER series airplanes; certificated in any category; equipped with a Pegasus flight management computer (FMC) system.

Unsafe Condition

(d) This AD was prompted by reports of “old” or expired air traffic control (ATC) clearance messages being displayed on the control display unit (CDU) of the FMC system during subsequent flights. We are issuing this AD to prevent the airplane from entering unauthorized airspace or following a flight path that does not provide minimum separation requirements between aircraft, and a consequent near miss or mid-air collision.

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.

Replacing the Operational Program Software (OPS) and Flight Information and Data Output (FIDO) Software

(f) For all airplanes operating with an Air Traffic Services data link function enabled: With the exception of the work instruction to replace the existing OPS and FIDO diskettes in the software media binder, which is not required by this AD, within 18 months after the effective date of this AD, replace the OPS and FIDO software of the existing FMC with Pegasus 2003 OPS and FIDO software or Pegasus 2005 OPS and FIDO software, in accordance with the applicable service bulletin specified in either Table 1 or Table 2 of this AD.

TABLE 1.—PEGASUS 2003 OPS AND FIDO—APPLICABLE SERVICE BULLETINS

| Boeing Airplane Model | Boeing Alert Service Bulletin | Dated |
|---|-------------------------------|--------------------|
| 757-200 series airplanes | 757-34A0258 | February 12, 2004. |
| 757-300 series airplanes | 757-34A0259 | February 12, 2004. |
| 767-200, -300, and -300F series airplanes | 767-34A0389, Revision 2 | December 16, 2004. |
| 767-400ER series airplanes | 767-34A0390 | February 19, 2004. |

TABLE 2.—PEGASUS 2005 OPS AND FIDO—APPLICABLE SERVICE BULLETINS

| Boeing Airplane Model | Boeing Service Bulletin | Dated |
|---|-------------------------|-----------------|
| 757-200 series airplanes | 757-34-0324 | March 17, 2005. |
| 757-300 series airplanes | 757-34-0325 | March 17, 2005. |
| 767-200, -300, and -300F series airplanes | 767-34-0471 | March 17, 2005. |
| 767-400ER series airplanes | 767-34-0472 | March 17, 2005. |

Acceptable for Compliance

(g) Accomplishment of Boeing Alert Service Bulletin 767-34A0389, dated February 19, 2004; or Revision 1, dated September 16, 2004, before the effective date of this AD, is an acceptable method of compliance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if

requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) You must use the applicable service bulletin 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 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, P.O. Box 3707,

Seattle, Washington 98124-2207, 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.

TABLE 3.—MATERIAL INCORPORATED BY REFERENCE

| Service Bulletin | Revision level | Date |
|---|----------------|--------------------|
| Boeing Alert Service Bulletin 757-34A0258 | Original | February 12, 2004. |
| Boeing Alert Service Bulletin 757-34A0259 | Original | February 12, 2004. |
| Boeing Alert Service Bulletin 767-34A0389 | 2 | December 16, 2004. |
| Boeing Alert Service Bulletin 767-34A0390 | Original | February 19, 2004. |
| Boeing Service Bulletin 757-34-0324 | Original | March 17, 2005. |
| Boeing Service Bulletin 757-34-0325 | Original | March 17, 2005. |
| Boeing Service Bulletin 767-34-0471 | Original | March 17, 2005. |
| Boeing Service Bulletin 767-34-0472 | Original | March 17, 2005. |

Issued in Renton, Washington, on August 29, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 05-17607 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2005-22308; Directorate Identifier 2005-NM-160-AD; Amendment 39-14255; AD 2005-18-15]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Falcon 2000EX Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Dassault Model Falcon 2000EX airplanes. This AD requires revising the airplane flight manual (AFM) to extend runway length limits for takeoff and landing. This AD also provides for an optional terminating action for the AFM revision. This AD results from an event in which braking efficiency was temporarily lost during landing, but was recovered after the flightcrew fully released and then reapplied the brakes. We are issuing this AD to prevent a runway overrun in the event of loss of braking function, which could result in injury to passengers or flightcrew and damage to the airplane.

DATES: This AD becomes effective September 22, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 22, 2005.

We must receive comments on this AD by November 7, 2005.

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

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

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

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

- Fax: (202) 493-2251.

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

Contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1137; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Dassault Model Falcon 2000EX airplanes. The DGAC advises us that an event occurred in which braking efficiency was temporarily lost during landing, but was recovered after the flightcrew fully released and then reapplied the brakes. This event has been attributed to improper communication of acceleration information between the inertial reference system (IRS) and the brake system control unit (BSCU). This condition, if not corrected, could result in a runway overrun in the event of loss of braking function, which could result in injury to passengers or flightcrew and damage to the airplane.

Relevant Service Information

Dassault has issued Temporary Change (TC) 17, dated July 26, 2005, to the Dassault Falcon 2000EX EASy Airplane Flight Manual, DGT88898. The TC describes procedures for revising the Limitations and Performance sections of the airplane flight manual (AFM) to extend runway length limits for takeoff and landing. The procedures include maximum allowable weights and field length limits for takeoff and landing.

Dassault has also issued Service Bulletin F2000EX-80, dated May 11, 2005. The service bulletin describes procedures for modifying the wiring that links the IRS to the BCSU. The modification establishes a direct wiring link between the IRS and the BSCU, which makes the braking function fully independent of the enhanced avionics system. Accomplishing the modification terminates the AFM revision.

We have determined that accomplishing the actions specified in the TC will adequately address the

unsafe condition. The DGAC mandated the TC and issued French emergency airworthiness directive UF-2005-140, dated July 26, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in France 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, 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 we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent a runway overrun in the event of loss of braking function, which could result in injury to passengers or flightcrew and damage to the airplane. This AD requires accomplishing the actions specified in the TC described previously, except as discussed under "Differences Among this AD, French Emergency Airworthiness Directive, and TC." This AD also provides for an optional terminating action for the AFM revision.

Differences Among This AD, French Emergency Airworthiness Directive, and TC

Although the French emergency airworthiness directive specifies a compliance time of before the next flight after the effective date of the French emergency airworthiness directive for the AFM revision, we specify a compliance time of 10 days after the effective date of this AD. We find that this will prevent airplanes from being grounded unnecessarily without adversely affecting the safety of the airplanes.

The French emergency airworthiness directive requires accomplishing the terminating action before December 31, 2006. This AD will provide for doing the terminating action as an option, and we may consider further rulemaking to require the terminating action.

Interim Action

We consider this AD interim action. We are currently considering requiring the modification of the wiring that links the IRS to the BSCU, which would terminate the AFM revision required by this AD. However, the planned

compliance time for the installation of the modification would allow enough time to provide notice and opportunity for public comment on the merits of the modification.

FAA's Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA-2005-22308; Directorate Identifier 2005-NM-160-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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):

2005-18-15 Dassault Aviation:

Amendment 39-14255. Docket No. FAA-2005-22308; Directorate Identifier 2005-NM-160-AD.

Effective Date

(a) This AD becomes effective September 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dassault Model Falcon 2000EX airplanes, certificated in any category, with serial numbers 6, and 28 and subsequent; except those on which Dassault Aviation Modification F2000EX M2675 has been done during production.

Unsafe Condition

(d) This AD results from an event in which braking efficiency was temporarily lost during landing, but was recovered after the flightcrew fully released and then reapplied the brakes. We are issuing this AD to prevent a runway overrun in the event of loss of braking function, which could result in injury to passengers or flightcrew and damage to 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.

Airplane Flight Manual (AFM) Revision

(f) Within 10 days after the effective date of this AD: Revise the Limitations and Performance sections of Dassault Falcon EASy F2000EX AFM, DGT88898, to include the information in Dassault Temporary Change (TC) 17, dated July 26, 2005, as specified in the TC. The TC includes procedures for extending runway length limits for takeoff and landing. Operate the airplane according to the limitations and procedures in the TC.

Note 1: This may be done by inserting a copy of Dassault TC 17 in the AFM. When the TC has been included in the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Dassault TC 17.

Optional Terminating Action

(g) Modifying the wiring that links the inertial reference system and the brake system control unit, in accordance with Dassault Service Bulletin F2000EX-80, dated May 11, 2005, ends the requirements for the AFM revision required by paragraph (f) of this AD. After accomplishing the modification, Dassault TC 17, dated July 26, 2005, may be removed from the AFM.

Alternative Methods of Compliance (AMOCs)

(h) 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

(i) French airworthiness directive UF-2005-140, dated July 26, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Dassault Temporary Change 17, dated July 26, 2005, to the Dassault Falcon 2000EX EASy Airplane Flight Manual, DGT88898, to perform the actions that are required by this AD, unless the AD specifies otherwise. If accomplished, you must use Dassault Service Bulletin F2000EX-80, dated May 11, 2005, to perform the optional terminating action specified in this AD. 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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606, 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 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-17599 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2005-22306; Directorate Identifier 2005-NM-169-AD; Amendment 39-14253; AD 2005-18-13]

RIN 2120-AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all

Israel Aircraft Industries, Ltd., Model 1124 and 1124A airplanes. This AD requires a one-time inspection for chafing of the electrical bundles in the overhead circuit breaker panel, and for adequate clearance between the fuselage frame and adjacent structures; and repair and rework if necessary. This AD results from reports of fire and smoke occurring in the passenger cabin. This AD also requires certain preventive actions. We are issuing this AD to prevent chafing of the electrical bundles in the overhead circuit breaker panel, which could result in a short circuit and consequent fire and smoke in the airplane.

DATES: This AD becomes effective September 22, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 22, 2005.

We must receive comments on this AD by November 7, 2005.

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

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

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

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

- Fax: (202) 493-2251.

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

Contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D-25, Savannah, Georgia 31402-2206, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT:

Mike Borfitt, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2677; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:**Discussion**

The Civil Aviation Administration of Israel (CAAI), which is the airworthiness authority for Israel, notified us that an unsafe condition may exist on all Israel Aircraft Industries, Ltd., Model 1124 and 1124A airplanes. The CAAI advises that reports have

been received of fire and smoke in the passenger cabins due to chafing between electrical bundles and the adjacent structure in the hinge area of the overhead circuit breaker panel. This condition, if not corrected, could result in a short circuit and consequent fire and smoke in the airplane.

Relevant Service Information

Israel Aircraft Industries has issued 1124 Westwind Alert Service Bulletin (ASB) 1124-24A-154, dated March 22, 2004. The ASB describes procedures for a one-time visual inspection for chafing of the electrical bundles in the overhead circuit breaker panel, and for adequate clearance between the fuselage frame and the "No Smoking—Fasten Seat Belt" sign; and repair and rework if necessary. The ASB also describes certain preventive actions including installing spiral wrap, insulated self-bondable tape, and a Teflon sheet at fuselage station 83.78. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAAI approved the ASB and issued Israeli Airworthiness Directive 24-05-02-32, dated March 15, 2005, to ensure the continued airworthiness of these airplanes in Israel.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in Israel 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 CAAI has kept the FAA informed of the situation described above. We have examined the CAAI's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent chafing of the electrical bundles in the overhead circuit breaker panel, which could result in a short circuit and consequent fire and smoke in the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the AD and the Israeli airworthiness directive."

Clarification of Inspection

Although the Israeli airworthiness directive and the ASB specify performing certain "inspections," this AD specifies performing "general visual

inspections.” For the purposes of this AD, Note 1 provides the definition of “general visual inspections.”

Difference Between the AD and the Israeli Airworthiness Directive

Although the Israeli airworthiness directive specifies a compliance time of “within 50 flight hours,” this AD specifies a compliance time of “within 60 days.” We have determined that, based on the fleet’s average utilization rate, a 60-day compliance time is appropriate, in that it will allow more time to comply for airplanes with a relatively higher utilization rate without compromising safety. We have coordinated this difference with the CAAI.

FAA’s Determination of the Effective Date

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

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the ADDRESSES section. Include “Docket No. FAA–2005–22306; Directorate Identifier 2005–NM–169–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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):

2005–18–13 Israel Aircraft Industries, Ltd.:
Amendment 39–14253. Docket No. FAA–2005–22306; Directorate Identifier 2005–NM–169–AD.

Effective Date

(a) This AD becomes effective September 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Israel Model 1124 and 1124A airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of fire and smoke occurring in the passenger cabin. We are issuing this AD to prevent chafing of the electrical bundles in the overhead circuit breaker panel, which could result in a short circuit and consequent fire and smoke in 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.

Inspection of the Electrical Bundles

(f) Within 60 days after the effective date of this AD, perform a one-time general visual inspection for chafing of the electrical bundles in the overhead circuit breaker panel and for adequate clearance between the fuselage frame and the “No Smoking—Fasten Seat Belt” sign, and perform the preventive actions, in accordance with 1124–Westwind (Israel Aircraft Service Industries) Alert Service Bulletin (ASB) 1124–24A–154, dated March 22, 2004.

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.”

Corrective Actions

(g) If any chafing of the electrical bundles or inadequate clearance is detected during the inspection required by paragraph (f) of this AD, before further flight, repair and rework, as applicable; in accordance with 1124–Westwind (Israel Aircraft Industries) Alert Service Bulletin 1124–24A–154, dated March 22, 2005.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 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) Israeli airworthiness directive 24–05–02–32, dated March 15, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use 1124–Westwind (Israel Aircraft Industries) Alert Service Bulletin 1124–24A–154, dated March 22, 2004, 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 Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402–2206, 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 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 05–17600 Filed 9–6–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Parts 7, 10, 11, 12, 18, 19, 24, 54, 101, 102, 111, 114, 123, 128, 132, 134, 141, 145, 146, 148, 151, 152, 177, 181, 191

[CBP Dec. 05–31]

Technical Amendments to Chapter 1 of Title 19 of the Code of Federal Regulations

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends Title 19 of the Code of Federal Regulations by making technical corrections to certain authority citations to reflect amendments to the Harmonized Tariff Schedule of the United States effected by the President’s Proclamation of December 30, 2003, to implement the United States-Singapore Free Trade Agreement.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Customs and Border Protection, Tel. (202) 572–8763.

SUPPLEMENTARY INFORMATION:

Background

Chapter I of Title 19 of the Code of Federal Regulations (19 CFR Chapter I) contains general and specific authority citations, several of which reference certain General Note provisions of the Harmonized Tariff Schedule of the United States (HTSUS). As a result of recent amendments to the HTSUS, several General Note provisions have been renumbered; however, the new designations are not yet reflected in Title 19 of the CFR. This document makes conforming technical corrections to Title 19 CFR to reflect the renumbered General Note provisions of the HTSUS.

The amendments to the HTSUS were effected by the United States-Singapore Free Trade Agreement (“USSFTA”), Public Law 108–78, 117 Stat. 948 (19 U.S.C. 3805 note), enacted on September 3, 2003. On December 30, 2003, the President issued Proclamation 7747 (68 FR 75793) to implement certain provisions of the USSFTA. Annex I of Proclamation 7747 modified the HTSUS, in pertinent part, as follows:

- The text of General Note (GN) 19 to the HTSUS is transferred and designated as GN 3(e).

- The text of General Note (GN) 20 to the HTS is transferred and designated as GN 3(f).

- The text of General Notes (GN) 23 and 24 of the HTSUS is transferred and designated as GN 3(i) and (j), respectively.

This document makes technical corrections to those provisions of 19 CFR Chapter 1 that contain references to the out-dated General Note citations.

Inapplicability of Public Notice and Comment Requirement and Delayed Effective Date Requirement

Because these amendments merely update certain authority citations in 19 CFR Chapter 1, pursuant to 5 U.S.C. 553(b)(B), CBP finds that good cause exists for dispensing with notice and public procedure as unnecessary. For these same reasons, pursuant to 5 U.S.C. 553(d)(3), CBP finds that good cause exists for dispensing with the requirement for a delayed effective date.

The Regulatory Flexibility Act

Because this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. *et seq.*).

Executive Order 12866

These amendments do not meet the criteria for a “significant regulatory action” as specified in E.O. 12866.

Signing Authority

This document is limited to technical corrections and is being issued in accordance with 19 CFR 0.1(b)(1), which provides, pursuant to Treasury Department Order No. 100–16, the Secretary of Homeland Security with the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. Accordingly, these regulations are signed by the Commissioner of Customs and Border Protection as the delegate of the Secretary of Homeland Security.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Attorney, Regulations Branch, Office of Regulations and Rulings.

List of Subjects*19 CFR Part 7*

American Samoa; Coffee; Customs duties and inspection; Guam; Guantanamo Bay Naval Station, Cuba; Kingman Reef; Liquors; Midway Islands; Puerto Rico; Wake Island; Wine.

19 CFR Part 10

Caribbean Basin initiative; Customs duties and inspection; Exports; Reporting and recordkeeping requirements.

19 CFR Parts 11 and 134

Customs duties and inspection; Labeling; Packaging and containers.

19 CFR Parts 12 and 141

Customs duties and inspection; Reporting and recordkeeping requirements.

19 CFR Part 18

Common carriers; Customs duties and inspection; Exports; Freight; Penalties; Reporting and recordkeeping requirements; Surety bonds.

19 CFR Part 19

Customs duties and inspection; Exports; Freight; Reporting and recordkeeping requirements; Surety bonds; Warehouses; Wheat.

19 CFR Part 24

Accounting; Claims; Customs duties and inspection; Harbors; Reporting and recordkeeping requirements; Taxes.

19 CFR Part 54

Customs duties and inspection; Metals; Reporting and recordkeeping requirements.

19 CFR Part 101

Customs duties and inspection; Harbors; Organization and functions (Government agencies); Seals and insignia; Vessels.

19 CFR Part 102

Canada; Customs duties and inspection; Imports; Mexico; Reporting and recordkeeping requirements; Trade agreements.

19 CFR Part 111

Administrative practice and procedure; Brokers; Customs duties and inspection; Penalties; Reporting and recordkeeping requirements.

19 CFR Part 114

Customs duties and inspection; Exports; Trade agreements.

19 CFR Part 123

Canada; Customs duties and inspection; Freight; International

boundaries; Mexico; Motor carriers; Railroads; Reporting and recordkeeping requirements; Vessels.

19 CFR Part 128

Administrative practice and procedure; Customs duties and inspection; Freight; Reporting and recordkeeping requirements.

19 CFR Part 132

Customs duties and inspection.

19 CFR Part 145

Customs duties and inspection; Exports; Lotteries; Reporting and recordkeeping requirements.

19 CFR Part 146

Administrative practice and procedure; Customs duties and inspection; Exports; Foreign trade zones; Penalties; Petroleum; Reporting and recordkeeping requirements.

19 CFR Part 148

Airmen; Customs duties and inspection; Foreign officials; Government employees; International organizations; Reporting and recordkeeping requirements; Seamen; Taxes.

19 CFR Part 151

Cigars and cigarettes; Cotton; Customs duties and inspection; Fruit juices; Laboratories; Metals; Oil imports; Reporting and recordkeeping requirements; Sugar; Wool.

19 CFR Part 152

Customs duties and inspection.

19 CFR Part 177

Administrative practice and procedure; Customs duties and inspection; Government procurement; Reporting and recordkeeping requirements.

19 CFR Part 181

Administrative practice and procedure; Canada; Customs duties and inspection; Exports; Imports; Mexico; Reporting and recordkeeping requirements; Trade agreements.

19 CFR Part 191

Alcohol and alcoholic beverages; Claims; Customs duties and inspection; Exports; Foreign trade zones; Guantanamo Bay Naval Station, Cuba; Packaging and containers; Reporting and recordkeeping requirements; Trade agreements.

Amendments to the Regulations

■ Chapter 1 of Title 19 of the Code of Federal Regulations (19 CFR chapter I) is amended as set forth below:

PART 7—CUSTOMS RELATIONS WITH INSULAR POSSESSIONS AND GUANTANAMO BAY NAVAL STATION

■ 1. The authority citation for part 7 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624; 48 U.S.C. 1406i.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

■ 2. The general authority citation for part 10 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

PART 11—PACKING AND STAMPING; MARKING

■ 3. The authority citation for part 11 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States), 1624.

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 4. The general authority citation for part 12 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

■ 5. The general authority citation for part 18 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623, 1624;

* * * * *

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

■ 6. The general authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

■ 7. The general authority citation for part 24 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a-58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701; Public Law 107-296, 116 Stat. 2135 (6 U.S.C. 1 *et. seq.*);

* * * * *

PART 54—CERTAIN IMPORTATIONS TEMPORARILY FREE OF DUTY

■ 8. The authority citation for part 54 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i); Section XV, Note 5, Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 101—GENERAL PROVISIONS

■ 9. The general authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

* * * * *

PART 102—RULES OF ORIGIN

■ 10. The authority citation for part 102 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314, 3592.

PART 111—CUSTOMS BROKERS

■ 11. The general authority citation for part 111 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 1641.

* * * * *

PART 114—CARNETS

■ 12. The authority citation for part 114 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

■ 13. The general authority citation for part 123 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624, 2071 note.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

■ 14. The authority citation for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the

United States), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

PART 132—QUOTAS

■ 15. The general authority citation for part 132 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

* * * * *

PART 134—COUNTRY OF ORIGIN MARKING

■ 16. The authority citation for part 134 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1304, 1624.

PART 141—ENTRY OF MERCHANDISE

■ 17. The general authority citation for part 141 continues, and the specific authority for § 141.4 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

■ Section 141.4 also issued under 19 U.S.C. 1202 (General Note 3(e); Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

* * * * *

§ 141.4 [Amended]

■ 18. Section 141.4 is amended:
 (a) In paragraph (b)(1), by removing the reference to number “19” and adding in its place the term “3(e)”;

(b) In paragraph (c)(2) by removing the word “Customs” and adding in its place the term “CBP”.

PART 145—MAIL IMPORTATIONS

■ 19. The general authority citation for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624;

* * * * *

PART 146—FOREIGN TRADE ZONES

■ 20. The authority citation for part 146 is revised to read as follows:

Authority: 19 U.S.C. 66, 81a-81u, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 21. The general authority citation for part 148 is revised to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States);

* * * * *

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

■ 22. The general authority citation for part 151 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i) and (j), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

■ 23. The general authority citation for part 152 continues, and the specific authority for § 152.13 is revised, to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624;

* * * * *

Section 152.13 also issued under 19 U.S.C. 1202 (General Note 3(f), Harmonized Tariff Schedule of the United States (HTSUS)).

§ 152.13 [Amended]

■ 24. In § 152.13:
 (a) Paragraph (b)(1) is amended by removing the word “Customs” and adding the term “CBP”, and by removing the reference to number “20” and adding in its place the term “3(f)”;

(b) Paragraphs (b)(2), (c) introductory text and (c)(1) are amended by removing references to number “20” each place they appear and adding in their place the term “3(f)”;

(c) Paragraph (c)(2) is amended by removing the word “Customs” and adding in its place the term “CBP”, and by removing the reference to number “20” and adding in its place the term “3(f)”;

(d) Paragraph (c)(3) is amended by removing the reference to number “20” and adding in its place the term “3(f)”;

and
 (e) Paragraph (d) is amended by removing the references to number “20” each place they appear and adding in their place the term “3(f)”.

PART 177—ADMINISTRATIVE RULINGS

■ 25. The authority citation for part 177 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1502, 1624, 1625;

PART 181—NORTH AMERICAN FREE TRADE AGREEMENT

■ 26. The authority citation for part 181 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1624, 3314;

PART 191—DRAWBACK

■ 27. The general authority citation for part 191 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1313, 1624;

* * * * *

Dated: September 1, 2005.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 05-17662 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-06-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Food and Drug Administration****21 CFR Parts 189 and 700**

[Docket No. 2004N-0081]

RIN 0910-AF47

Use of Materials Derived From Cattle in Human Food and Cosmetics

AGENCY: Food and Drug Administration, HHS.

ACTION: Interim final rule and request for comments.

SUMMARY: The Food and Drug Administration (FDA) is amending the interim final rule on use of materials derived from cattle in human food and cosmetics published in the **Federal Register** of July 14, 2004. In the July 14, 2004, interim final rule, FDA designated certain materials from cattle, including the entire small intestine, as “prohibited cattle materials” and banned the use of such materials in human food, including dietary supplements, and in cosmetics. FDA is taking this action in response to comments received on the interim final rule. Information was provided in comments that persuaded the agency that the distal ileum, one of three portions of the small intestine, could be consistently and effectively removed from the small intestine, such that the remainder of the small intestine, formerly a prohibited cattle material, could be used for human food or cosmetics. We (FDA) are also clarifying that milk and milk products, hide and hide-derived products, and

tallow derivatives are not prohibited cattle materials. Comments also led the agency to reconsider the method cited in the interim final rule for determining insoluble impurities in tallow and to cite instead a method that is less costly to use and requires less specialized equipment. FDA issued the interim final rule to minimize human exposure to materials that scientific studies have demonstrated are highly likely to contain the bovine spongiform encephalopathy (BSE) agent in cattle infected with the disease. FDA believes that the amended provisions of the interim final rule provide the same level of protection from human exposure to the agent that causes BSE as the original provisions.

DATES: The amendments to the interim final rule are effective October 7, 2005. Submit written or electronic comments on the amendments to the interim final rule by November 7, 2005. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 189.5 and 700.27 as of October 7, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2004N-0081, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Agency Web site: <http://www.fda.gov/dockets/ecomments>. Follow the instructions for submitting comments on the agency Web site.
- E-mail: fdadockets@oc.fda.gov. Include Docket No. 2004N-0081 and/or RIN number RIN 0910-AF47 in the subject line of your e-mail message.
- FAX: 301-827-6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, Food and Drug Administration (HFA-305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.fda.gov/ohrms/dockets/default.htm>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the “Effective Date and Opportunity for Public Comment” heading of the **SUPPLEMENTARY INFORMATION** in section IV of this document.

Docket: For access to the docket to read background documents or

comments received, go to <http://www.fda.gov/ohrms/dockets/default.htm> and insert the docket number, found in brackets in the heading of this document, into the “Search” box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Rebecca Buckner, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1486.

SUPPLEMENTARY INFORMATION:**I. Background**

On July 14, 2004, FDA issued an interim final rule entitled “Use of Materials Derived From Cattle in Human Food and Cosmetics” (also referred to as “the interim final rule”), to address the potential risk of BSE in human food and cosmetics (69 FR 42256, July 14, 2004). In the interim final rule, FDA designated certain materials from cattle as “prohibited cattle materials” and banned the use of such materials in human food, including dietary supplements, and in cosmetics in §§ 189.5 and 700.27 (21 CFR 189.5 and 21 CFR 700.27). In the interim final rule, FDA designated the following as prohibited cattle materials: Specified risk materials (SRMs), the small intestine from all cattle, material from nonambulatory cattle, material from cattle not inspected and passed for human consumption, and mechanically separated (MS)(Beef). The materials designated as SRMs were the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older, and the distal ileum of the small intestine and tonsils from all cattle. The Food Safety and Inspection Service (FSIS) of the United States Department of Agriculture (USDA) designated the same list of materials as SRMs in its rule entitled “Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-ambulatory Disabled Cattle” (69 FR 1862, January 12, 2004). In addition, FDA provided an alternative standard for tallow in its interim final rule. Tallow must be produced by either excluding prohibited cattle materials or, if produced using prohibited cattle materials, must contain no more than 0.15 percent insoluble impurities. Tallow derivatives were exempted from

the provisions of FDA's interim final rule.

The comment period for the interim final rule closed on October 12, 2004. After reviewing comments received on the interim final rule, FDA determined that it needed to make some changes and clarifications now, rather than waiting until we could address all of the comments in a final rule. We are amending or clarifying the interim final rule in the following five areas:

1. Use of small intestine,
2. Status of milk and milk products,
3. Status of tallow derivatives,
4. Status of cattle hide, and
5. Testing method cited for

determining the level of insoluble impurities in tallow.

We are making these amendments to the interim final rule in part in response to comments indicating uncertainty regarding the status of certain products under the interim final rule and new information regarding removal of the distal ileum.

II. Amendments and Clarifications to the Interim Final Rule

A. Prohibition on the Use of Small Intestine From All Cattle

In the interim final rule of July 14, 2004, FDA prohibited the use of the entire small intestine in human food and cosmetics, even though the agency (at the time the interim final rule was issued) only considered, and currently only considers, the distal ileum portion of the small intestine to be an SRM. As stated in the preamble to the interim final rule, FDA prohibited the use of the entire small intestine because at the time we believed: (1) It would be difficult to distinguish one end of the small intestine from the other once it had been removed from the animal; (2) there was a lack of international agreement on how much of the small intestine should be removed to ensure that the distal ileum is separated from the remainder of the intestine; and (3) given the lack of international consensus on the issue, a manufacturer or processor would not be able to document that the distal ileum was adequately removed (69 FR 42256 at 42259). We requested comments addressing our reasons for prohibiting use of the entire small intestine and solicited specific information on whether processors may be able to effectively remove just the distal ileum.

1. Comments Received

In response to the interim final rule, FDA received comments from beef processors, the natural casing industry, the beef by-product industry, and

importers and exporters of natural casings and beef by-products that requested that the agency amend its prohibited cattle materials rule to prohibit only the distal ileum portion of the small intestine for human food and cosmetics, rather than the entire small intestine. As stated in the comments, infectivity has only been confirmed in the distal ileum of the small intestine of cattle infected with BSE under experimental conditions, and the technology exists to effectively remove the distal ileum portion from the rest of the small intestine.

Comments also described, in detail, examples of verifiable procedures for the effective removal of the distal ileum portion of the small intestine, which is made up of three sections: The duodenum, the jejunum, and the ileum. One procedure described in the comments begins with the removal of the small intestine from the abomasum. Under this procedure, the small intestine is separated from the caecum at the ileocecal orifice, and the ileum is separated from the jejunum at the flange. According to the comments, the resulting segment that contains the distal ileum would measure 36 to 72 inches in length depending on the age and size of the animal.

Another procedure described in the comments also begins with removal of the small intestine from the abomasum, except that under this procedure the small intestine remains attached to the caecum. The separation of the non-ileum sections of the small intestine from the ileum is made at a point 36 to 80 inches from the caecum, leaving the entire ileum of the small intestine attached to the caecum. According to the comments, leaving the ileum attached to the caecum at this initial stage provides an easily verifiable point of reference for on-line inspectors. The next step in this procedure is to separate the 36 to 80 inch portion of the intestine that contains the ileum from the caecum at the ileocecal orifice, leaving the caecum and the small intestine for edible use.

Another comment noted that, prior to December 2003, Japan accepted importation of beef casings from the United States on the basis of U.S. government certified removal of the distal ileum from the small intestine. The procedure required the removal of at least 80 inches of the small intestine, measured from the junction of the ileum and the caecum, to ensure removal of the distal ileum.

Several comments indicated that, because of the distinct shape of the distal ileum of cattle, it is easy to verify the effective removal of this portion of

the small intestine. Furthermore, comments from the natural casing industry stated that, because of the distal ileum's physical properties, particularly the absence of a curve and an irregular thick surface, the distal ileum is not useable as a natural casing for sausage products. Thus, these comments noted, many slaughter establishments in the United States and Canada have a policy of removing the distal ileum from all cattle at the time of slaughter. Furthermore, as stated by the comments, slaughter establishments in Brazil, Argentina, and Uruguay, the three countries that are the major exporters of natural casings to the United States, have all been able to certify the removal of the distal ileum using achievable standards when requested to do so by their U.S. customers.

In addition to comments requesting that only the distal ileum portion of the small intestine be prohibited from use in human food and cosmetics, we received comments stating that the entire small intestine or both the small and large intestines should be considered SRMs. Comments noted that the European Union (EU) identifies both the small and large intestine as specified risk material and prohibits their use in food. As stated in comments, this was done in the EU because BSE infection is associated with absorption of the BSE agent from contaminated feed and because it is not possible to prevent slaughterhouse contamination of other intestinal areas with matter from the ileum. Comments also cited a study showing that the myenteric plexus of the distal ileum was positive when immunostained in naturally infected and experimentally infected cattle. The comments noted that, because the myenteric plexus runs throughout the intestine, the possibility of infectivity in other sections of the intestine cannot be discounted. Comments also noted that the International Review Team (IRT), appointed to review BSE prevention measures in the United States after the discovery of the BSE-positive cow in Washington State, recommended that the SRM ban be amended to include the entire small and large intestines.

2. Response to Comments

After considering the comments submitted on the removal of the distal ileum, FDA has concluded that processors have the technology to effectively remove the distal ileum portion from the rest of the small intestine.

FDA believes that procedures to ensure effective removal of the distal ileum require that at least 80 inches of

the uncoiled and trimmed small intestine, as measured from the caeco-colic junction and progressing proximally towards the jejunum, be removed. We believe that these procedures ensure removal of the entire distal ileum despite differences in length of the intestinal tract or its segments between breeds or among animals of different sizes of the same breed. An alternative removal procedure may be used if an establishment can demonstrate that it is equally effective in ensuring that the entire distal ileum is completely removed.

We do not agree with comments that stated that the entire small intestine or both the small and the large intestine should be designated as SRMs. Though the EU prohibits the entire intestine from use in food, the data that we are aware of indicating infectivity along the entire intestine is from other species, not from cattle infected with BSE or other transmissible spongiform encephalopathies (TSEs) (Refs. 1 to 6). Though the studies in other species represent the distribution of infectivity in those species, they may not represent the distribution of infectivity in cattle infected with BSE as evidenced by studies with bovine tissue.

In cattle, infectivity has been found in the distal ileum in tissue bioassay from cattle experimentally given BSE (Ref. 7; see discussion in sections I, E and F of the interim final rule). In cattle experimentally infected with BSE, positive Peyer's patches were found by immunohistochemistry only in the distal ileum, and in cattle with naturally occurring and experimental BSE, positive myenteric plexus neurons were found only in the distal ileum (Ref. 8). The duodenum of cattle experimentally given BSE has not demonstrated infectivity when tested by mouse bioassay and has been negative for the presence of abnormal prions when examined by immunohistochemistry during all stages in the pathogenesis of the disease (Refs. 8 and 9). Few samples of jejunum have been tested, but those that have been tested were negative for the presence of abnormal prions when examined by immunohistochemistry (Ref. 8). In a bioassay of tissues from cattle with naturally-occurring BSE, no infectivity was found in the splanchnic nerve, rumen, omasum, abomasum, proximal small intestine, proximal colon, distal colon, and rectum, or even in the distal small intestine (Ref. 9).

The study by Terry and others (Ref. 8) indicated that the myenteric plexus of the distal ileum contained some abnormal prion protein in neurons. This tissue extends throughout the small intestine, so we cannot completely

eliminate the possibility that infectivity might exist in the jejunum or the duodenum. However, that same study found no evidence of abnormal prion protein in the sections of the duodenum and the jejunum examined. Therefore, it is likely that, if any infectivity is present, it is at levels too low to present a public health risk. We realize that the studies on tissue infectivity have limitations, but we are not aware of evidence that intestine other than the distal ileum harbors infectivity in cattle with BSE. If we become aware of data indicating that other portions of the small intestine or the large intestine in cattle harbor infectivity, we will take action appropriate to the public health risk presented by the tissues.

We also do not agree that cross contamination of other parts of the intestine with infectivity in the distal ileum is unavoidable in the slaughterhouse. Comments provided several methods by which the distal ileum can be consistently and effectively removed from the rest of the small intestine without cross contamination during slaughter. We agree that, if these methods are properly implemented, cross contamination can be avoided.

Finally, we do not agree that we should require that the entire intestine of all cattle be designated an SRM because the IRT recommended it. As stated previously in this document, the agency does not find that there is sufficient evidence to support designating the entire intestine as an SRM.

Therefore, we are amending §§ 189.5(a)(1) and 700.27(a)(1) to reflect that small intestine is a prohibited cattle material unless it meets the provisions of new §§ 189.5(b)(2) and 700.27(b)(2). New §§ 189.5(b)(2) and 700.27(b)(2) state that small intestine is not considered prohibited cattle material if the distal ileum is removed by a procedure that verifiably removes at least 80 inches of the uncoiled and trimmed small intestine as measured from the caeco-colic junction and progressing proximally towards the jejunum or by a procedure that the establishment can demonstrate is equally effective in ensuring complete removal of the distal ileum.

These amendments to FDA's interim final rule are consistent with amendments that USDA made to its interim final rule regarding use of small intestine appearing elsewhere in this issue of the **Federal Register**. FDA regulates stripped and cleaned casings derived from bovine small intestine, and USDA's FSIS regulates unprocessed bovine small intestine and "meat food"

products made with beef casings. It is important to note that natural beef casings and other FDA regulated products derived from small intestine are also subject to FSIS requirements when used in FSIS regulated products. Specifically, FSIS will not permit natural casings derived from beef small intestine to be used in meat food products unless the casings are derived from cattle that have been inspected and passed in a U.S. official establishment or in a certified foreign establishment.

B. Status of Milk and Milk Products

The interim final rule provides that no human food or cosmetics shall be manufactured from, processed with or otherwise contain, prohibited cattle materials. Prohibited cattle materials include material from cattle not inspected and passed for human consumption.

1. Comments Received

Several comments noted that milk and milk products could be viewed as products that are not inspected and passed because milk is obtained from live animals that do not undergo the same inspection as cattle during slaughter. These comments noted that milk and milk products are internationally recognized to present a negligible risk of transmitting the agent that causes BSE and asked that we clarify the status of milk and milk products under the interim final rule.

2. Response to Comments

The interim final rule applies to materials from cattle slaughtered on or after the effective date and was not meant to apply to milk and milk products, which come from live cattle. Therefore, we are amending §§ 189.5(a)(1) and 700.27(a)(1) to clarify that milk and milk products are not included in the definition of "prohibited cattle materials."

C. Clarification of the Classification of Tallow Derivatives

The interim final rule defines tallow and tallow derivatives and states that prohibited cattle materials do not include tallow that contains no more than 0.15 percent hexane-insoluble impurities and tallow derivatives.

1. Comments Received

Several comments requested that we clarify whether the tallow used as starting material for the tallow derivatives has to contain no more than 0.15 percent insoluble impurities in order for the tallow derivatives not to be included in the definition of "prohibited cattle materials."

2. Response to Comments

The exemption of tallow derivatives from the definition of "prohibited cattle materials" does not depend on the source tallow for the derivatives. For the reasons discussed in the preamble to the interim final rule, tallow derivatives present a negligible risk of transmitting the agent that causes BSE regardless of the source tallow. Therefore, all tallow derivatives are exempt from the ban on the use of prohibited cattle materials in human food and cosmetics.

D. Status of Human Food and Cosmetics Derived From Cattle Hide

The interim final rule provides that no human food or cosmetics shall be manufactured from, processed with or otherwise contain, prohibited cattle materials. Prohibited cattle materials include products that have not been inspected and passed for human consumption. Cattle hides, which are used as source material for collagen and collagen casings, receive antemortem but not postmortem inspection in most slaughter operations.

1. Comments Received

Several comments stated that the commenters did not believe that FDA meant to designate all cattle hide and products derived from hide as prohibited cattle material because they do not undergo postmortem inspection. These comments also pointed out that antemortem inspection is when BSE might be detected from the behavior or appearance of the animal, while postmortem inspection is more useful for detecting cross contamination among parts of the carcass. Comments indicated that risk of cross contamination by other carcass parts is not relevant for the hide because it is removed at the beginning of the slaughter process. In addition, comments noted that cattle hide is internationally recognized to be a tissue with a negligible risk of transmitting the agent that causes BSE, and the World Organization for Animal Health (OIE) recommends that it be freely traded regardless of the BSE risk status of the exporting countries.

2. Response to Comments

We agree with these comments. It was not our intention to designate all products derived from cattle hide as prohibited cattle materials for use in human food and cosmetics. We also recognize that cattle hide has been determined to be a tissue with negligible risk of transmitting the agent that causes BSE and that the OIE recommends that it be freely traded regardless of the BSE risk status of the exporting countries.

Therefore, we are exempting hides from the provisions of the interim final rule and are amending §§189.5(a)(1) and 700.27(a)(1) to clarify that hides and hide-derived products are not included in the definitions of "prohibited cattle materials." Though we are exempting hides from the provisions of the interim final rule, manufacturers and processors must take precautions to avoid cross contamination of hides and other nonprohibited cattle material with prohibited cattle material during slaughter and processing. If hides are cross contaminated with prohibited cattle material, they will be considered adulterated.

E. Method for Determining the Level of Insoluble Impurities in Tallow

Under the interim final rule (§§ 189.5(a)(6) and 700.27(a)(6)), any raw materials may be used as the starting material for tallow production as long as the resulting tallow contains no more than 0.15 percent hexane insoluble impurities. The interim final rule requires that the method for "hexane-insoluble matter" described in the 5th edition of the Food Chemicals Codex (FCC) be used to measure hexane-insoluble impurities in tallow. The interim final rule also states that an alternative method may be used if it is equivalent to the FCC method.

1. Comments Received

We received several comments requesting that we specify a different method for measuring insoluble impurities in tallow. Comments stated that the domestic tallow industry primarily uses a method of the American Oil Chemists' Society (AOCS) to measure insoluble impurities. In comparison to the FCC method, comments stated that the AOCS method is less expensive, requires less solvent and has lower solvent disposal costs, and does not require specialized equipment or supplies. These comments requested that FDA approve the AOCS method for measuring insoluble impurities.

2. Response to Comments

FDA agrees that the FCC method is more expensive, uses more solvent, and requires more specialized equipment than other methods currently used by industry. In response to comments and the information we obtained about the various methods, we are amending the interim final rule to cite the method for measuring insoluble impurities of the AOCS ("Insoluble Impurities," AOCS Official Method Ca 3a-46) or a method equivalent to it in accuracy, precision and sensitivity. The AOCS method is

currently used by the domestic tallow industry, uses updated equipment, is less expensive to implement, and may be more sensitive than the FCC method.

Reference to the AOCS method in the amended interim final rule does not exclude use of the FCC method we cited in the interim final rule. Any testing method may be used that is equivalent to the AOCS method. Those wishing to use an alternate test are responsible for determining that it is equivalent to the AOCS method cited in the interim final rule as amended here; it is not necessary that FDA approve the use of an alternate test.

III. Summary of Amendments to the Interim Final Rule

We are amending §§ 189.5(a)(1) and 700.27(a)(1) to reflect that small intestine is a prohibited cattle material unless it meets the provisions of new §§ 189.5(b)(2) and 700.27(b)(2). New §§ 189.5(b)(2) and 700.27(b)(2) state that small intestine is not considered prohibited cattle material if the distal ileum is removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine as measured from the caeco-colic junction and progressing proximally towards the jejunum or by a procedure that the establishment can demonstrate is equally effective in ensuring complete removal of the distal ileum.

We are amending §§ 189.5(a)(1) and 700.27(a)(1) to specify that milk and milk products and hides and hide-derived products are not prohibited cattle materials.

Finally, we are amending §§ 189.5(a)(6) and 700.27(a)(6) to indicate that tallow, if it is sourced from unknown materials, must contain not more than 0.15 percent insoluble impurities as determined by the method "Insoluble Impurities" (AOCS Official Method Ca 3a-46), AOCS, or another method equivalent in accuracy, precision, and sensitivity to AOCS Official Method Ca 3a-46.

IV. Effective Date and Opportunity for Public Comment

FDA provided the public with an opportunity to comment on the issues raised by the interim final rule and addressed in this document. These amendments to the interim final rule are in response to some of those comments. These amendments to the interim final rule are effective October 7, 2005. FDA invites public comment on these amendments to the interim final rule. The comment period will be 60 days. The agency will consider modifications to these amendments to the interim final rule based on comments made during

the comment period. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding these amendments to the interim final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

FDA will address other comments received in response to the interim final rule and comments received in response to this amendment in further rulemaking.

V. Executive Order 12866 and Regulatory Flexibility Act

FDA has examined the economic implications of this amendment to the interim final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of \$100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. FDA has determined that this amendment to the interim final rule is not an economically significant regulatory action.

FDA has examined the economic implications of this amendment to the interim final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect of the rule on small entities. FDA has determined that this amendment to the interim final rule does not have a significant economic impact on a substantial number of small entities.

Bovine Small Intestine

The effect of amending the interim final rule will be that FDA regulated human food and cosmetics may be

manufactured from, processed with, or otherwise contain small intestine if the distal ileum is effectively removed. FDA regulates stripped and cleaned casings derived from bovine small intestine, and USDA's FSIS regulates unprocessed bovine small intestine and "meat food" products made with beef casings. Very few, if any, FDA regulated foods use beef intestines or beef casings as an ingredient. Therefore, the impact on FDA regulated food industries as a result of this amendment to the final rule is expected to be small. In the economic analysis of the interim final rule, FDA did not estimate any opportunity costs for cattle slaughterers or manufacturers that used beef small intestines and beef natural casings in their products because the small intestine had already been banned as human food by the FSIS interim final rule (69 FR 1862, January 12, 2004).

USDA's FSIS is amending its interim final rule to allow the use of bovine small intestine, without the distal ileum, in USDA regulated products. FDA's amendment will benefit those FSIS regulated manufacturers who use beef casings; FDA's amendment again allows this bovine material potentially to be used in FSIS regulated products. See the FSIS interim final rule (69 FR 1862; January 12, 2004) and accompanying analysis for the cost savings associated with the renewed use of bovine small intestine in human foods products.

Tallow

FDA is amending the interim final rule to cite the AOCS method for measuring insoluble impurities in tallow. The domestic tallow industry primarily uses the AOCS method to measure insoluble impurities in tallow, so this change to the rule will reduce the burden of having to switch to a new measurement standard for many of the domestic tallow manufacturers. In comparison to the FCC method cited by the interim final rule, commenters stated that the AOCS method is less expensive than the FCC method. Tallow producers do not have to use the AOCS method if they use another method that is equivalent to the AOCS method in accuracy, precision, and sensitivity. Tallow producers using nonAOCS methods that can be validated will likely not switch methods and will only bear the cost burden of validating that their method is equivalent to the AOCS method. Tallow producers, who do not currently use the AOCS method but decide to switch to the method as a result of this amendment to the interim final rule, will pay a \$50 fee to obtain the AOCS copyrighted method.

VI. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for subsequent changes to the nonFDA Web sites after this document publishes in the **Federal Register**.)

1. Jeffrey, M., S. Ryder, S. Martin, et al., "Oral Inoculation of Sheep With the Agent of Bovine Spongiform Encephalopathy (BSE). 1. Onset and Distribution of Disease-Specific PrP Accumulation in Brain and Viscera," *Journal of Comparative Pathology*, 124: 280–289, 2001.
2. Bons, N., S. Lehmann, N. Nishida, et al., "BSE Infection of the Small Short-Lived Primate *Microcebus Murinus*," *Comptes Rendus Biologies*, 325: 67–74, 2002.
3. Herzog, C., N. Sales, N. Etchegaray, et al., "Tissue Distribution of Bovine Spongiform Encephalopathy Agent in Primate After Intravenous or Oral Infection," *Lancet*, 363: 422–428, 2004.
4. Jeffrey, M., I. Begara-McGorum, S. Clark, et al., "Occurrence and Distribution of Infection-Specific PrP in Tissues of Clinical Scrapie Cases and Cull Sheep From Scrapie-Affected Farms in Shetland," *Journal of Comparative Pathology*, 127: 264–273, 2002.
5. Press, C. McL., R. Heggebo, A. Espenes, "Involvement of Gut-Associated Lymphoid Tissue of Ruminants in the Spread of Transmissible Spongiform Encephalopathies," *Advanced Drug Delivery Reviews*, 56: 885–899, 2004.
6. Heggebo, R., C. McL. Press, G. Gunnes, "Distribution and Accumulation of PrP in Gut-Associated and Peripheral Lymphoid Tissue of Scrapie-Affected Suffolk Sheep," *Journal of General Virology*, 83: 479–489, 2002.
7. Wells, G. A. H., M. Dawson, S. A. C. Hawkins, et al., "Infectivity in the Ileum of Cattle Challenged Orally With Bovine Spongiform Encephalopathy," *Veterinary Record*, 135: 40–41, 1994.
8. Terry, L. A., S. Marsh, S. J. Ryder, et al., "Detection of Disease-Specific PrP in the Distal Ileum of Cattle Exposed Orally to the Agent of Bovine Spongiform Encephalopathy," *Veterinary Record*, 152: 387–392, 2003.
9. Scientific Steering Committee, European Commission, "Update on the Opinion of TSE Infectivity Distribution in Ruminant Tissues: Initially Adopted by the Scientific Steering Committee at its Meeting of January 10–11, 2002, and Amended at its Meeting of November 7–8, 2002, Following the Submission of a Risk Assessment by the German Federal Ministry of Consumer Protection, Food and Agriculture and New Scientific Evidence Regarding BSE Infectivity Distribution in Tonsils," accessed online at http://europa.eu.int/comm/food/fs/bse/scientific_advice08_en.html.

List of Subjects**21 CFR Part 189**

Food additives, Food packaging, Incorporation by reference.

21 CFR Part 700

Cosmetics, Packaging and containers, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 189 and 700 are amended as follows:

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

■ 1. The authority citation for 21 CFR part 189 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 371.

■ 2. Part 189 is amended by revising § 189.5 to read as follows:

Subpart B—Prohibited Cattle Materials

Sec.

§ 189.5 Prohibited cattle materials.

Subpart B—Prohibited Cattle Materials

§ 189.5 Prohibited cattle materials.

(a) *Definitions.* The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) apply to such terms when used in this part. The following definitions also apply:

(1) *Prohibited cattle materials* means specified risk materials, small intestine of all cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or mechanically separated (MS)(Beef). Prohibited cattle materials do not include tallow that contains no more than 0.15 percent insoluble impurities, tallow derivatives, hides and hide-derived products, and milk and milk products.

(2) *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated.

(3) *Mechanically Separated (MS)(Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses that meets the specifications contained in 9 CFR 319.5, the regulation that prescribes the standard of identity for MS (Species).

(4) *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.

(5) *Specified risk material* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older and the tonsils and distal ileum of the small intestine of all cattle.

(6) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be produced from tissues that are not prohibited cattle materials or must contain not more than 0.15 percent insoluble impurities as determined by the method entitled "Insoluble Impurities" (AOCS Official Method Ca 3a-46), American Oil Chemists' Society (AOCS), 5th Edition, 1997, incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to AOCS Official Method Ca 3a-46. You may obtain copies of the method from AOCS (<http://www.aocs.org>) 2211 W. Bradley Ave. Champaign, IL 61821. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 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.

(7) *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

(b) *Requirements.*

(1) No human food shall be manufactured from, processed with, or otherwise contain, prohibited cattle materials.

(2) The small intestine is not considered prohibited cattle material if

the distal ileum is removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine, as measured from the caeco-colic junction and progressing proximally towards the jejunum, or by a procedure that the establishment can demonstrate is equally effective in ensuring complete removal of the distal ileum.

(c) *Records.* Manufacturers and processors of human food that is manufactured from, processed with, or otherwise contains, cattle material must make existing records relevant to compliance with this section available to FDA for inspection and copying.

(d) *Adulteration.*

(1) Failure of a manufacturer or processor to operate in compliance with the requirements of paragraphs (b) or (c) of this section renders human food adulterated under section 402(a)(4) of the act.

(2) Human food manufactured from, processed with, or otherwise containing, prohibited cattle materials is unfit for human food and deemed adulterated under section 402(a)(3) of the act.

(3) *Food additive status.* Prohibited cattle materials for use in human food are food additives subject to section 409 of the act, except when used as dietary ingredients in dietary supplements. The use or intended use of any prohibited cattle material in human food causes the material and the food to be adulterated under section 402(a)(2)(C) of the act if the prohibited cattle material is a food additive, unless it is the subject of a food additive regulation or of an investigational exemption for a food additive under § 170.17 of this chapter.

PART 700—GENERAL

■ 3. The authority citation for 21 CFR part 700 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 361, 362, 371, 374.

■ 4. Part 700 is amended by revising § 700.27 to read as follows:

§ 700.27 Use of prohibited cattle materials in cosmetic products.

(a) *Definitions.* The definitions and interpretations of terms contained in section 201 of the Federal Food, Drug, and Cosmetic Act (the act) apply to such terms when used in this part. The following definitions also apply:

(1) *Prohibited cattle materials* means specified risk materials, small intestine of all cattle except as provided in paragraph (b)(2) of this section, material from nonambulatory disabled cattle, material from cattle not inspected and passed, or Mechanically Separated (MS)(Beef). Prohibited cattle materials

do not include tallow that contains no more than 0.15 percent insoluble impurities, tallow derivatives, hides and hide-derived products, and milk and milk products.

(2) *Inspected and passed* means that the product has been inspected and passed for human consumption by the appropriate regulatory authority, and at the time it was inspected and passed, it was found to be not adulterated.

(3) *Mechanically Separated (MS)(Beef)* means a meat food product that is finely comminuted, resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of cattle carcasses and parts of carcasses that meet the specifications contained in 9 CFR 319.5, the regulation that prescribes the standard of identity for MS (Species).

(4) *Nonambulatory disabled cattle* means cattle that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic conditions.

(5) *Specified risk material* means the brain, skull, eyes, trigeminal ganglia, spinal cord, vertebral column (excluding the vertebrae of the tail, the transverse processes of the thoracic and lumbar vertebrae, and the wings of the sacrum), and dorsal root ganglia of cattle 30 months and older and the tonsils and distal ileum of the small intestine of all cattle.

(6) *Tallow* means the rendered fat of cattle obtained by pressing or by applying any other extraction process to tissues derived directly from discrete adipose tissue masses or to other carcass parts and tissues. Tallow must be produced from tissues that are not prohibited cattle materials or must contain not more than 0.15 percent insoluble impurities as determined by the method entitled "Insoluble Impurities" (AOCS Official Method Ca 3a-46), American Oil Chemists' Society (AOCS), 5th Edition, 1997, incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, or another method equivalent in accuracy, precision, and sensitivity to AOCS Official Method Ca 3a-46. You may obtain copies of the method from the AOCS (<http://www.aocs.org>) 2211 W. Bradley Ave. Champaign, IL 61821. Copies may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD 20740, 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.

(7) *Tallow derivative* means any chemical obtained through initial hydrolysis, saponification, or transesterification of tallow; chemical conversion of material obtained by hydrolysis, saponification, or transesterification may be applied to obtain the desired product.

(b) *Requirements.*

(1) No cosmetic shall be manufactured from, processed with, or otherwise contain, prohibited cattle materials.

(2) The small intestine is not considered prohibited cattle material if the distal ileum is removed by a procedure that removes at least 80 inches of the uncoiled and trimmed small intestine, as measured from the caeco-colic junction and progressing proximally towards the jejunum, or by a procedure that the establishment can demonstrate is equally effective in ensuring complete removal of the distal ileum.

(c) *Records.* Manufacturers and processors of cosmetics that are manufactured from, processed with, or otherwise contain, cattle material must make existing records relevant to compliance with this section available to FDA for inspection and copying.

(d) *Adulteration.* Failure of a manufacturer or processor to operate in compliance with the requirements of paragraph (b) or (c) of this section renders a cosmetic adulterated under section 601(c) of the act.

Dated: August 31, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-17693 Filed 9-6-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 2003D-0221]

Medical Devices; Immunology and Microbiology Devices; Classification of the Endotoxin Assay; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) published a final rule in the **Federal Register** of October 31, 2003 (68 FR 62007). The final rule classified the endotoxin assay into class II (special controls). The agency classified the device into class II (special controls) in order to provide reasonable assurance of safety and effectiveness of the device. FDA is amending the agency's regulations to redesignate the section number listed in the Code of Federal Regulations (CFR) from § 866.3610 to § 866.3210.

DATES: This rule is effective September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Freddie M. Poole, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 240-276-0496 ext. 1111.

SUPPLEMENTARY INFORMATION: FDA has found that the endotoxin assay regulation does not reflect the correct section number listed in the CFR. Accordingly, FDA is amending the regulation in § 866.3610 (21 CFR 866.3610) to correct the error by redesignating the section number from § 866.3610 to 866.3210.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

§ 866.3610 [Redesignated as § 866.3210]

■ 2. Section 866.3610 is redesignated as § 866.3210.

Dated: August 26, 2005.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 05-17645 Filed 9-6-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD05-05-108]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Inside Thorofare, Ventnor City, NJ**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Dorset Avenue Bridge, at New Jersey Intracoastal Waterway (ICW) mile 72.1, across the Inside Thorofare at Ventnor City, New Jersey. To facilitate removal and replacement of deck lift spans, the temporary deviation would allow partial openings of the drawbridge.

DATES: This deviation is effective from 7 a.m. on October 3, 2005, to 11 p.m. on October 21, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6422. Commander (obr), Fifth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

SUPPLEMENTARY INFORMATION: The Dorset Avenue Bridge has a vertical clearance in the closed position of 9 feet at mean high water and 12 feet at mean low water.

A.P. Construction, Inc. on behalf of Atlantic County, which owns and operates this double-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.733(h) to facilitate deck repairs.

During this temporary deviation, deck repairs will require immobilizing half of the draw span. From 7 a.m. to 11 p.m. beginning on October 3, 2005 until and including October 21, 2005, single leaf openings will be provided on signal. Only double leaf openings will be provided from 11 p.m. to 7 a.m. Full openings will be provided at any time when at least two hours advance notice

is given to the bridge tender at (609) 822-1805 or via marine radio on channel 13 VHF. At all other times, the draw shall open on signal.

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

Dated: August 23, 2005.

Waverly W. Gregory, Jr.,
Chief, Bridge Administration Branch Fifth Coast Guard District.

[FR Doc. 05-17715 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-15-P**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[COTP Lower Mississippi River-05-008]

RIN 1625-AA00**Safety Zone; Lower Mississippi River (LMR), Greenville, MS****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Lower Mississippi River. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the New Greenville Bridge construction. Entry into this zone is prohibited to all vessels and mariners unless specifically authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative.

DATES: This rule is effective from July 18, 2005, until November 14, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP Lower Mississippi River-05-008] and are available for inspection or copying at Sector Lower Mississippi River, 2 Auction Avenue, Memphis, Tennessee, 38105 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer Ray Bartlett, Sector Lower Mississippi River Waterways Management Branch, at (901) 544-3912 extension 2227.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this

regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the safety hazards associated with the New Greenville Bridge construction. The Coast Guard first learned on July 6, 2005 that there would be construction and a need for a safety zone.

Background and Purpose

On July 06, 2005, U.S. Coast Guard Sector Lower Mississippi River was notified by the contractor (Massman/Traylor, a Joint Venture) that the New Greenville Bridge (mile 529.8) would be having deck plates installed from a crane on a barge. COTP Lower Mississippi River consulted the Lower Mississippi River Commission (LOMRC) to analyze impacts to commercial traffic in the vicinity of the New Greenville Bridge and determine that this safety zone is needed to protect the construction crews, vessels, and mariners from the additional construction hazards associated with the installation of the deck plates using a crane located on a barge in the river under the bridge.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River (LMR) from mile marker 529.8 to mile marker 532.3 extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the crane lifting deck plates into position during the bridge construction. Entry into this zone is prohibited to all vessels and mariners unless specifically authorized by the COTP Lower Mississippi River or a designated representative. Specific dates and times for river closures will be announced via Safety Marine Information Broadcast (SMIB) and are expected to last for a period of eight hours from 8:30 a.m. to 5:30 p.m.

The COTP Lower Mississippi River may be contacted by telephone at (901) 544-3912 extension 2124. The COTP Lower Mississippi River or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective period for the safety zone. This rule is effective from July 18, 2005 until November 14, 2005.

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).

This rule will only be in effect for a short period of time and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

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. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels that would be required to operate between mile marker 529.8 and mile marker 532.3, from July 18, 2005 to November 14, 2005. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

If you are a small business entity and are significantly affected by this regulation please contact Chief Warrant Office Ray Bartlett, Sector Lower Mississippi River Waterways Management Branch, at (901) 544–3912 extension 2227.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal

regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). 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 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 State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk

to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this final rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section

2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in NEPA.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation no. 0170.1.

■ 2. A new temporary § 165.T08-153 is added to read as follows:

§ 165.T08-153 Safety Zone; Lower Mississippi River, Mile Marker 529.8 to Mile Marker 532.3, Greenville, MS.

(a) *Location.* The following area is a safety zone: all waters of the Lower Mississippi River (LMR), beginning at mile marker 529.8 and ending at mile marker 532.3, extending the entire width of the river.

(b) *Effective dates.* This section is effective from 8 p.m. on July 18, 2005 until 10 p.m. on November 14, 2005.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels or mariners is prohibited unless authorized by the COTP Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the COTP Lower Mississippi River or a designated representative. They may be contacted on VHF-FM Channel 16, or by telephone at (901) 544-3912, extension 2124.

(3) All persons and vessels shall comply with the instructions of the COTP Lower Mississippi River and designated personnel. Designated personnel include commissioned,

warrant, and petty officers of the U.S. Coast Guard.

Dated: July 18, 2005.

P.J. Maguire,

Commander, U.S. Coast Guard, Captain of the Port Lower Mississippi River.

[FR Doc. 05-17717 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3100

[WO-310-1310-PB-24-1A]

RIN 1004-AD71

Oil and Gas Leasing: Onshore Oil and Gas Operations—Fees, Rentals and Royalty Stripper Well Royalty Reductions Retention of Records

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is revising the regulations to require that records supporting a stripper well royalty reduction be retained for seven years from the last date that an operator claims the reduction.

DATES: This rule is effective on September 7, 2005.

FOR FURTHER INFORMATION CONTACT:

Rudy Baier, Fluid Minerals Group, Bureau of Land Management, (202) 452-5024 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, seven days a week, except holidays, for assistance in reaching Mr. Baier.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Final Rule as adopted
- III. Procedural Matters

I. Background

The existing regulation at 43 CFR 3103.4-2 authorizes the operator of a stripper well property to pay a reduced royalty tied to the lowest average production of oil per eligible well per well-day for any 12-month period since the initial qualifying period of August 1, 1990 through July 31, 1991. The regulations permit the operator to use the reduced royalty rate upon certifying that the royalty rate was calculated under the instructions and procedures in the regulations using reports of oil production and well-days for the qualifying period. However, current

regulations do not require a submission of supporting evidence or specify the retention of records supporting the reduced royalty.

The Inspector General of the Department, as well as several States, have expressed concern about the inability of auditors to confirm the validity of the claimed production per eligible well per well day during the qualifying period, if it were more than seven years after the qualifying period. Although August 1990 through July 1991 production may be the basis for the royalty rate claimed after September 1992, some operators have inferred from the absence of specific regulatory requirements that they need not retain those records more than seven years from July 1991.

The Secretary is authorized under 30 U.S.C. 1713 and 1724(f) to require the retention of records for seven years from the date of the transactions for which they are required for "determining compliance with rules or orders" or "for the purpose of determining obligations due." Since the royalty rate for stripper well properties depends on the lowest level of production per well since the "qualifying period," BLM is revising the regulations to require that records of production (on which the claimed royalty rate is based) be retained for seven years after the benefit of the reduced royalty is last claimed.

II. Final Rule as Adopted

This rulemaking establishes a requirement that records supporting the reduced royalty rate claimed under 43 CFR 3103.4-2 be retained for seven years from the last date on which the operator is relying upon it to support its royalty rate.

III. Procedural Matters

Waiver of Notice of Proposed Rulemaking

Waiver of 30-Day Delay of Effective Date

In accordance with 5 U.S.C. 553, BLM finds that notice and public comment on this rule is contrary to the public interest, as that concept is defined in 5 U.S.C. 553(b)(3)(B), because to provide advance notice of the requirement prior to its effectiveness would frustrate the public interest, by allowing operators with questionable claims to royalty relief to destroy, without penalty, records in their possession that might document their ineligibility for the royalty relief claimed. The risk of destruction of records is also good cause to waive the 30-day delay of the effective date.

Executive Order 12866, Regulatory Planning and Review

This rulemaking is not a significant regulatory action and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. This rulemaking will not have an effect of \$100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rulemaking will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rulemaking does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. This rule will have little or no impact on operators who are currently eligible for royalty reductions under the stripper well program. The rule merely requires operators to retain records which they currently have in their possession.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Because this rule would merely require operators receiving a royalty reduction under the program to retain records they currently have, BLM has determined under the RFA that this rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rulemaking is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rulemaking does not have an annual effect on the economy of \$100 million or more. It will not cause an increase in costs or prices for consumers, individual industries, Federal, State, or local governments agencies, or geographic regions. The rulemaking 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. As stated above, this

rule only requires operators to retain records they currently have.

Unfunded Mandates Reform Act

This rulemaking does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year; nor does this rule have a significant or unique effect on State, local, or tribal governments or the private sector. The rule does not impose any unfunded mandate on State, local, or tribal governments or the private sector. The rule merely requires operators to retain records which they currently have. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The rulemaking does not represent a government action capable of interfering with constitutionally protected property rights. It merely requires operators to retain records they currently have. Therefore, the DOI has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The rulemaking 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. This records retention rule has no effect on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The BLM has determined that this rulemaking does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of paragraph 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act of 1995

BLM has determined this rulemaking does not contain any new information collection requirements that the Office

of Management and Budget must approve under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

BLM has determined that this rule is administrative and involves only procedural changes addressing the retention of records for the stripper well property royalty rate reduction program. Therefore, it is categorically excluded from environmental review under paragraph 102(2)(C) of the National Environmental Policy Act of 1969 pursuant to 516 Departmental Manual (DM) 2.3A and 516 DM 2, Appendix 1, Item 1.10. BLM has further determined that none of the exceptions at 516 DM Appendix 2 apply.

Pursuant to Council on Environmental Quality regulations (40 CFR 1508.4) and the environmental policies and procedures of the DOI, the term “categorical exclusions” means categories of actions which do not individually or cumulatively have a significant effect on the human environment and which have no such effect in procedures adopted by a Federal agency and therefore require neither an environmental assessment nor an environmental impact statement.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13175, we have found that this rulemaking does not include policies that have tribal implications. This rule does not apply to leases of Indian minerals.

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

Under Executive Order 13211, BLM has determined that the rulemaking will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. The rule merely requires operators to retain records which they currently have. This rule will not have a significant impact on the national energy supply.

Author

The principal author of this rule is Rudy Baier, Fluid Minerals Group, assisted by Shirlean Beshir of the Regulatory Affairs Group.

List of Subjects in 43 CFR Part 3100

Government contracts, Mineral royalties, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, and Surety bonds.

Dated: August 24, 2005.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

■ Accordingly, for the reasons stated in the preamble and exercising the authorities stated, we amend part 3100 of Title 43 of the Code of Federal Regulations as set forth below:

PART 3100—OIL AND GAS LEASING

■ 1. Revise the authority citation for part 3100 to read as follows:

Authority: 30 U.S.C. 189 and 359; 30 U.S.C. 1713 and 1751; and 43 U.S.C. 1732(b), 1733, and 1740.

Subpart 3103—Fees, Rentals and Royalty

■ 2. Amend § 3103.4–2 by redesignating paragraph (b)(3)(vi) as paragraph (b)(3)(vii) and adding a new paragraph (b)(3)(vi) to read as follows:

§ 3103.4–2 Stripper well royalty reductions.

* * * * *

(b) * * *

(3) * * *

(vi) *Record retention.* For seven years after production on which the operator claims a royalty rate reduction for stripper well properties, the operator must retain and make available to BLM for inspection all documents on which the calculation of the applicable royalty rate under this section relies.

[FR Doc. 05–17618 Filed 9–6–05; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 25, 73, 90, and 97

[ET Docket No. 04–139; FCC 05–70]

WRC–03 Omnibus

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On August 10, 2005, (70 FR 46576) the Commission published final

rules in a Report and Order, which implemented allocation changes to the frequency range between 5900 kHz and 27.5 GHz in furtherance of decisions that were made at the World Radiocommunication Conference (Geneva 2003) (WRC–03). This document contains corrections to 47 CFR 2.101 and 2.106.

DATES: Effective September 9, 2005.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, e-mail: *Tom.Mooring@fcc.gov*.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 05–15213 published August 10, 2005 (70 FR 46576) make the following corrections.

■ 1. On page 46585, in the third column, the table in § 2.101 is corrected by removing the periods at the end of the entries under the column entitled “Metric abbreviations for the bands.” The corrected table reads as follows (the notes are not shown):

| Band number | Symbols | Frequency range (lower limit exclusive, upper limit inclusive) | Corresponding metric subdivision | Metric abbreviations for the bands |
|-------------|-----------|--|----------------------------------|------------------------------------|
| 4 | VLF | 3 to 30 kHz | Myriametric waves | B.Mam |
| 5 | LF | 30 to 300 kHz | Kilometric waves | B.km |
| 6 | MF | 300 to 3 000 kHz | Hectometric waves | B.hm |
| 7 | HF | 3 to 30 MHz | Decametric waves | B.dam |
| 8 | VHF | 30 to 300 MHz | Metric waves | B.m |
| 9 | UHF | 300 to 3 000 MHz | Decimetric waves | B.dm |
| 10 | SHF | 3 to 30 GHz | Centimetric waves | B.cm |
| 11 | EHF | 30 to 300 GHz | Millimetric waves | B.mm |
| 12 | | 300 to 3000 GHz | Decimillimetric waves. | |

BILLING CODE 6712–01–P

■ 3. On page 46619, page 31 of the Table of Frequency Allocations (47 CFR 2.106) is corrected in order to correct the omission of footnote US343 to read as follows:

| Table of Frequency Allocations | | | 1435-1668.4 MHz (UHF) | | Page 31 | |
|---|--|---|--|-------------------|---|--|
| | | | International Table | | United States Table | |
| Region 1 Table | Region 2 Table | Region 3 Table | Federal Table | Non-Federal Table | FCC Rule Part(s) | |
| (See previous page) | | | 1435-1525 | | Aviation (87) | |
| 1452-1492 FIXED MOBILE except aeronautical mobile BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A | 1452-1492 FIXED MOBILE 5.343 BROADCASTING 5.345 5.347 BROADCASTING-SATELLITE 5.345 5.347 5.347A | | MOBILE (aeronautical telemetry) | | | |
| 5.341 5.342 | 5.341 5.344 | | | | | |
| 1492-1518 FIXED MOBILE except aeronautical mobile | 1492-1518 FIXED MOBILE 5.343 | 1492-1518 FIXED MOBILE | | | | |
| 5.341 5.342 | 5.341 5.344 | 5.341 | | | | |
| 1518-1525 FIXED MOBILE except aeronautical mobile MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C | 1518-1525 FIXED MOBILE 5.343 MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C | 1518-1525 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.348 5.348A 5.348B 5.348C | 5.341 US78 | | | |
| 5.341 5.342 | 5.341 5.344 | 5.341 | | | | |
| 1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile except aeronautical mobile 5.349 | 1525-1530 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Fixed Mobile 5.343 | 1525-1530 SPACE OPERATION (space-to-Earth) FIXED MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A Earth exploration-satellite Mobile 5.349 | 1525-1535 MOBILE-SATELLITE (space-to-Earth) US315 US380 | | Satellite Communications (25) Maritime (80) | |
| 5.341 5.342 5.350 5.351 5.352A 5.354 | 5.341 5.351 5.354 | 5.341 5.351 5.352A 5.354 | | | | |
| 1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A 5.353A Earth exploration-satellite Fixed Mobile except aeronautical mobile | 1530-1535 SPACE OPERATION (space-to-Earth) MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A 5.353A Earth exploration-satellite Fixed Mobile 5.343 | | | | | |
| 5.341 5.342 5.351 5.354 | 5.341 5.351 5.354 | | | | | |
| 1535-1559 MOBILE-SATELLITE (space-to-Earth) 5.347A 5.351A | | | 5.341 5.351 | | | |
| 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A 1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329A | | | 1535-1559 MOBILE-SATELLITE (space-to-Earth) US308 US309 US315 US380 | | Satellite Communications (25) Maritime (80) Aviation (87) | |
| 5.341 5.351 5.353A 5.354 5.355 5.356 5.357 5.357A 5.359 5.362A 1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) 5.328B 5.329A | | | 5.341 5.351 5.356 1559-1610 AERONAUTICAL RADIONAVIGATION RADIONAVIGATION-SATELLITE (space-to-Earth) (space-to-space) | | Satellite Communications (25) Maritime (80) Aviation (87) | |
| 5.341 5.362B 5.362C 5.363 | | | 5.341 US208 US260 US343 | | Aviation (87) | |

■ 4. On page 46629, page 41 of the Table of Frequency Allocations (47 CFR 2.106) is corrected in order to correct the rule part cross references for the bands that comprise 6525–7125 MHz to read as follows:

| Table of Frequency Allocations | | | | 5925-8025 MHz (SHF) | | Page 41 | | |
|--|----------------|---------------------|--|---|--|--|--|--|
| International Table | | United States Table | | FCC Rule Part(s) | | | | |
| Region 1 Table | Region 2 Table | Region 3 Table | Federal Table | Non-Federal Table | | | | |
| 5925-6700 FIXED FIXED-SATELLITE (Earth-to-space) 5.457A 5.457B MOBILE | | | 5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space) NG181 | 5925-6425 FIXED NG41 FIXED-SATELLITE (Earth-to-space) NG181 | International Fixed (23) Satellite Communications (25) Fixed Microwave (101) | | | |
| | | | 6425-6625 5.440 5.458 6525-6700 | 6425-6525 FIXED-SATELLITE (Earth-to-space) MOBILE 5.440 5.458 6525-6700 | Auxiliary Broadcasting (74) Cable TV Relay (78) Fixed Microwave (101) | | | |
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| 5.458 5.458A 5.458B 5.458C 7075-7145 FIXED MOBILE | | | 5.458 7125-7145 FIXED 5.458 G116 7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116 7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133 5.458 | 5.458 7125-7145 FIXED 5.458 G116 7145-7190 FIXED SPACE RESEARCH (deep space) (Earth-to-space) US262 5.458 G116 7190-7235 FIXED SPACE RESEARCH (Earth-to-space) G133 5.458 | Auxiliary Broadcasting (74) Cable TV Relay (78) | | | |
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| 5.458 5.459 | | | | 5.458 | | | | |

■ 5. On page 46674, in the first column, footnote US396 paragraph (a) of the Table of Frequency Allocations, 47 CFR 2.106, is corrected to read as follows:

(a) Until March 25, 2007, the band 7300–7350 kHz is allocated to the fixed service on a primary basis and to the mobile except aeronautical mobile service on a secondary basis for Federal and non-Federal use. After March 25, 2007, authority to operate in the band 7300–7350 kHz shall not be extended to new non-Federal stations in the fixed and mobile except aeronautical mobile services. After March 25, 2007, Federal and non-Federal stations in the fixed and mobile except aeronautical mobile services shall:

(1) Be limited to communications wholly within the United States and its insular areas;

(2) Not cause harmful interference to the broadcasting service;

(3) Be limited to the minimum power needed to achieve communications; and

(4) Take account of the seasonal use of frequencies by the broadcasting service published in accordance with Article 12 of the ITU *Radio Regulations*.

■ 6. On page 46674, in the third column, footnote NG142 of the Table of Frequency Allocations, 47 CFR 2.106, is corrected to read as follows:
NG142 TV broadcast stations authorized to operate in the bands 54–72 MHz, 76–88 MHz, 174–216 MHz, 470–608 MHz, and 614–806 MHz may use a portion of the television vertical blanking interval for the transmission of telecommunications signals, on the condition that harmful interference will not be caused to the reception of primary services, and that such telecommunications services must accept any interference caused by primary services operating in these bands.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05–17796 Filed 9–6–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2303; MB Docket No. 03–222; RM–10812]

Radio Broadcasting Services; Charlotte and Grand Ledge, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, 68 FR 62554 (November 5, 2003), this *Report and Order* substitutes Channel 225A for Channel 224A, at FM Station WQTX, Charlotte, Michigan, reallocates Channel 225A to Grand Ledge, Michigan, and modifies Station WQTX's license accordingly. The coordinates for Channel 225A at Grand Ledge Michigan are 42–42–17 NL and 84–37–20 WL, with a site restriction of 11.5 kilometers (7.2 miles) southeast of Grande Ledge.

DATES: Effective October 3, 2005.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 03–322, adopted August 17, 2005, and released August 19, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 224A at Charlotte, and adding Grand Ledge, Channel 225A.

Federal Communications Commission.

John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–17522 Filed 9–6–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–2302; MB Docket No. 04–386; RM–10817]

Radio Broadcasting Services; Leesville and New Llano, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a petition filed by Charles Crawford, proposing the allotment of Channel 252C3 at New Llano, Louisiana, as the community's first local service. See 69 FR 61616, published October 20, 2004. This document also substitutes Channel 224A for vacant Channel 252A at Leesville, Louisiana to accommodate Channel 252C3 at New Llano, Louisiana. Channel 252C3 can be allotted to New Llano in compliance with the Commission's rules provided there is a site restriction of 10 kilometers (6.2 miles) north of New Llano at reference coordinates 31–12–18 North Latitude and 93–16–11 West Longitude. The site restriction is necessary to prevent short-spacing to the license sites of FM Stations KTJM, Channel 253C, Port Arthur, Texas and Station KKST, Channel 254C1, Oakdale, Louisiana. Additionally, Channel 224A can be allotted to Leesville in compliance with the Commission's rules provided there is a site restriction of 12.6 kilometers (7.8 miles) east of Leesville at reference coordinates 31–07–40 North Latitude and 93–08–03 West Longitude. The site restriction is necessary to prevent short-spacing to the license site of FM Station KJVC, Channel 224A, Mansfield, Louisiana.

DATES: Effective October 3, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04–386, adopted August 17, 2005, and released August 19, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW.,

Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Channel 224A at Leesville is currently listed in the FM Table of Allotments, however, that channel was substituted for Channel 228C3 at Leesville in MM Docket No. 98-191, and the license of Station KJAE(FM) was modified accordingly. See *Leesville, Louisiana*, 64 FR 31140, published June 10, 1999.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

PART 73—RADIO BROADCAST SERVICES

- 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

- 2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 252A at Leesville and by adding New Llano, Channel 252C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-17520 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 05-181; FCC 05-159]

Implementation of Section 210 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 To Amend Section 338 of the Communications Act

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission is correcting a Final Rule summary that was published in the *Federal Register* on August 31, 2005 (70 FR 51658). In this document, the Commission corrects paragraph (c)(6) of the 47 CFR 76.66.

DATES: Effective September 30, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Eloise Gore,

Eloise.Gore@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120.

SUPPLEMENTARY INFORMATION: In FR Doc. 05-17324 published on August 31, 2005 (70 FR 51658), make the following correction.

1. On page 51668, in the third column, the last sentence of paragraph (c)(6) is corrected to read as follows:

A noncommercial television broadcast station located in a local market in Alaska or Hawaii must request carriage by October 1, 2005, for carriage of its signal that originates as an analog signal for carriage commencing on December 8, 2005, and by April 1, 2007, for its signal that originates as a digital signal for carriage commencing on June 8, 2007 and ending on December 31, 2008.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 05-17794 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2005-22251]

RIN 2127-AJ70

Federal Motor Vehicle Safety Standards; Tire Pressure Monitoring Systems

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration requesting changes in our April 8, 2005 final rule establishing a new Federal motor vehicle safety standard (FMVSS) requiring installation in new light vehicles of a tire pressure monitoring system (TPMS) capable of detecting when one or more of a vehicle's tires is significantly under-inflated. The petitions for reconsideration are granted in part and denied in part, and through this document, we are amending the standard and related provisions accordingly.

DATES: *Effective Date:* The amendments made in this final rule are effective October 7, 2005. Voluntary compliance is permitted immediately.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration for this rule, your petition must be received by October 24, 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 Notices) 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. George Soodoo or Mr. Samuel Daniel, Office of Crash Avoidance Standards (Telephone: 202-366-2720) (Fax: 202-366-4329).

For legal issues, you may call Mr. Eric Stas, Office of 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:

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I. Summary of Decision

This document responds to 15 petitions for reconsideration related to our April 8, 2005 final rule¹

¹ 70 FR 18136 (April 8, 2005) (Docket No. NHTSA-2005-20586-1).

establishing FMVSS No. 138, *Tire Pressure Monitoring Systems*. The petitioners raised a variety of issues, most of which involved requests for technical changes to the standard (see section IV of this document for a complete discussion of issues raised in the petitions and their resolution). We have decided to grant the petitions in part and to deny them in part.

The following points highlight the amendments to Standard No. 138 that we are adopting in response to the petitions for reconsideration of the April 8, 2005 final rule (excluding a few minor editorial changes).

- We have decided to postpone the compliance date for the standard's required TPMS-related owner's manual statement until September 1, 2007 (Model Year 2007), thereby granting petitioners' request for additional lead time to incorporate the required language into the vehicle owner's manual. We do not believe that extending the compliance date in this manner (consistent with a recommendation in one of the petitions) would result in any safety consequences. Delay of the owner's manual requirements would not impact the functioning of the TPMS or the warnings that it provides, and we expect that even before that date, TPMS-equipped vehicles would have some owner's manual statement presenting relevant information to the consumer.

We specifically note that delay in the compliance date for the standard's owner's manual requirements does not impact vehicle manufacturers' responsibility to provide TPMSs complying with FMVSS No. 138 on a schedule consistent with the phase-in commencing on October 5, 2005, as set forth in the April 8, 2005 final rule.

- The agency has decided to retain the final rule's requirement for the TPMS malfunction indicator lamp (MIL) to illuminate whenever there is a malfunction that affects the generation of transmission of control or response signals in the vehicle's tire pressure monitoring system. However, in response to petitions, we have decided to amend the standard's test procedures for malfunction detection to clarify that telltale lamps will not be disconnected because such malfunctions will be indicated during the bulb check(s) required under the standard. Specifically, we are amending S6(k) by adding the following statement: "When simulating a TPMS malfunction, the electrical connections for the telltale lamps shall not be disconnected."

- The lack of synchronization between the timing of compliance for compliance under FMVSS No. 138 and

the TPMS telltale requirements of FMVSS No. 101, *Controls and Displays*, have been remedied through an earlier amendment to FMVSS No. 101.

Technical revisions to FMVSS No. 138 have also been made in light of recent amendments to FMVSS No. 101 that have resulted in a change in location of the TPMS telltale provisions from Table 2 to Table 1 of that standard.

- In this rule, we are amending the regulatory text in FMVSS No. 138 to clarify that for a combined low tire pressure/TPMS malfunction indicator telltale, the same flashing/continuous-illumination sequence is required for one or more malfunctions that may affect the system simultaneously.

- The agency has decided to modify the standard's test procedures to reduce the current 2-psi pressure adjustment (below the TPMS activation threshold) to 1 psi. The 2-psi adjustment was intended to facilitate testing, but several petitioners expressed concern that a 2-psi adjustment could allow TPMSs to achieve compliance with an under-inflation detection capability of 30 percent or more. The agency anticipates that a 1-psi adjustment would continue to facilitate testing while maintaining the under-inflation level close to the standard's 25-percent under-inflation activation threshold.

- In order to more clearly differentiate between the TPMS standard's two phase-in production periods which are of different lengths (*i.e.*, almost 11 months vs. one year), we have decided to modify 49 CFR 585.66, *Reporting Requirements*, to differentiate the reports to be submitted to the agency for each of the two phase-in periods. As currently drafted, section 585.66(b)(1), *Basis for Statement of Compliance*, and section 585.66(b)(2), *Production*, require manufacturers to report values for the full production year, without mention of the period corresponding to the first period of the phase-in (*i.e.*, from October 5, 2005 to September 1, 2006), which is the relevant total production value for calculation under S7.1(b) of FMVSS No. 138. Because the reporting of this information directly relates to determining compliance with the requirements of FMVSS No. 138, we have decided to revise 49 CFR 585.66(b)(1) and (2) to clearly differentiate between the two phase-in production periods.

II. Background

A. The TREAD Act

Congress enacted the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of

2000² on November 1, 2000. Section 13 of that Act³ required the Secretary of Transportation, within one year of the statute's enactment, to complete a rulemaking "to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly under inflated." Section 13 also required the regulation to take effect within two years of the completion of the rulemaking. Responsibility for this rulemaking was delegated to NHTSA.

B. Rulemaking History Prior to the April 2005 Final Rule

Since passage of the TREAD Act, FMVSS No. 138 has had a protracted regulatory history. In summary, the agency published a notice of proposed rulemaking (NPRM)⁴ on July 26, 2001, which was followed by a final rule⁵ published on June 5, 2002.

After issuance of the June 2002 final rule, Public Citizen, Inc., New York Public Interest Research Group, and the Center for Auto Safety filed a suit challenging certain aspects of the TPMS regulation. The Court of Appeals for the Second Circuit (Second Circuit) issued its opinion in *Public Citizen, Inc. v. Mineta*⁶ on August 6, 2003. The Court found that the TREAD Act unambiguously mandates TPMSs capable of monitoring each tire up to a total of four tires, effectively precluding the one-tire, 30-percent under-inflation detection option in the June 5, 2002 final rule, or any similar option for a system that cannot detect under-inflation in any combination of tires up to four tires. Ultimately, the Court vacated the standard in its entirety and directed the agency to issue a new rule consistent with its August 6, 2003 opinion. NHTSA published a final rule in the **Federal Register** on November 20, 2003, vacating FMVSS No. 138.⁷

The agency commenced rulemaking efforts to re-establish FMVSS No. 138 in a manner consistent with the Court's opinion and responsive to issues raised in earlier petitions for reconsideration, the majority of which remained relevant. To this end, the agency published a new NPRM⁸ on September 16, 2004.

² Public Law 106-414, 114 Stat. 1800 (2000).

³ See 49 U.S.C. 30123 note (2003).

⁴ 66 FR 38982 (July 26, 2001) (Docket No. NHTSA-2000-8572-30).

⁵ 67 FR 38704 (June 5, 2002) (Docket No. NHTSA-2000-8572-219).

⁶ 340 F.3d 39 (2d Cir. 2003).

⁷ 68 FR 65404 (Nov. 20, 2003) (Docket No. NHTSA-2003-16524-1).

⁸ 69 FR 55896 (Sept. 16, 2004) (Docket No. NHTSA-2004-19054-1).

After carefully considering public comments on the NPRM, the agency published a final rule⁹ in the **Federal Register** on April 8, 2005, which re-established FMVSS No. 138, with a phase-in set to begin on October 5, 2005. (For a more complete discussion of this earlier period of the regulatory history of the TPMS rulemaking, readers should consult the June 5, 2002 final rule, the September 16, 2004 NPRM, and the April 8, 2005 final rule.)

C. The April 8, 2005 Final Rule

As noted above, the April 8, 2005 final rule for TPMS re-established FMVSS No. 138 in a manner consistent with the Second Circuit's opinion. Specifically, it requires passenger cars, multi-purpose passenger vehicles, trucks, and buses with a GVWR of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to all four of its tires, is significantly under-inflated.¹⁰ Subject to the phase-in schedule and the exceptions below, the final rule mandated compliance with the requirements of the standard, commencing with covered vehicles manufactured on or after October 5, 2005 (*i.e.*, MY 2006). The standard is intended to be technology-neutral, so as to permit compliance with any available TPMS technology that meets the standard's performance requirements.

The following points highlight the key provisions of the April 8, 2005 final rule.

- The TPMS is required to detect and to provide a warning to the driver within 20 minutes of when the pressure of one or more of the vehicle's tires, up to a total of four tires, is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure for the tires, or a minimum level of pressure specified in the standard,

whichever pressure is higher. These minimum activation pressures are included in Table 1 of FMVSS No. 138.

- Vehicle manufacturers must certify vehicle compliance under the standard with the tires installed on the vehicle at the time of initial vehicle sale.¹¹

- The TPMS must include a low tire pressure warning telltale¹² (yellow) that must remain illuminated as long as any of the vehicle's tires remain significantly under-inflated and the vehicle's ignition locking system is in the "On" ("Run") position.¹³ The TPMS's low tire pressure warning telltale must perform a bulb-check at vehicle start-up.

- The TPMS must also include a TPMS malfunction indicator to alert the driver when the system is non-operational, and thus unable to provide the required low tire pressure warning.¹⁴ The TPMS malfunction indicator must detect a malfunction within 20 minutes of occurrence of a system malfunction and provide a warning to the driver. This final rule provided two options by which vehicle manufacturers may indicate a TPMS malfunction:

- (1) Installation of a separate, dedicated telltale (yellow) that illuminates upon detection of the malfunction and remains continuously illuminated as long as the ignition locking system is in the "On" ("Run") position and the situation causing the malfunction remains uncorrected, or
- (2) Designing the low tire pressure telltale so that it flashes for a period of at least 60 seconds and no longer than 90 seconds when a malfunction is detected, after which the telltale must remain continuously illuminated as long as the ignition locking system is in the "On" ("Run") position. This flashing and illumination sequence must be repeated upon each subsequent

vehicle start-up until the situation causing the malfunction has been corrected.

If the option for a separate telltale is selected, the TPMS malfunction telltale must perform a bulb-check at vehicle start-up.

- The TPMS is not required to monitor the spare tire (if provided), either when it is stowed or when it is installed on the vehicle.

- For vehicles certified under the standard, vehicle manufacturers must provide in the owner's manual a specified statement explaining the purpose of the low tire pressure warning telltale, the potential consequences of significantly under-inflated tires, the meaning of the telltale when it is illuminated, and what actions drivers should take when the telltale is illuminated. Vehicle manufacturers also must provide a specified statement in the owner's manual regarding: (1) Potential problems related to compatibility between the vehicle's TPMS and various replacement or alternate tires and wheels, and (2) the presence and operation of the TPMS malfunction indicator. For vehicles that do not come with an owner's manual, the required information must be provided in writing to the first purchaser at the time of initial vehicle sale.

In terms of the timing for compliance, the final rule provided as follows. Subject to the vehicle manufacturer option for carry-backward credits discussed below, NHTSA decided to adopt the following phase-in schedule: 20 percent of a vehicle manufacturer's light vehicles are required to comply with the standard during the period from October 5, 2005 to August 31, 2006; 70 percent during the period from September 1, 2006 to August 31, 2007, and all light vehicles thereafter. Vehicle manufacturers are not required to comply with the requirements related to the TPMS malfunction indicator (including associated owner's manual requirements) until September 1, 2007; however, at that point, all covered vehicles must meet all relevant requirements of the standard (*i.e.*, no additional phase-in for MIL requirements). The final rule included phase-in reporting requirements consistent with the phase-in schedule discussed above.

Small volume manufacturers (*i.e.*, those manufacturers producing fewer than 5,000 vehicles for sale in the U.S. per year during the phase-in period) are not subject to the phase-in requirements, but their vehicles must meet the requirements of the standard beginning September 1, 2007.

⁹ 70 FR 18136 (April 5, 2005) (Docket No. NHTSA-2005-20586-1).

¹⁰ There are two types of TPMSs currently available, direct TPMSs and indirect TPMSs. Direct TPMSs have a pressure sensor in each wheel that transmits pressure information to a receiver. In contrast, indirect TPMSs do not have tire pressure sensors, but instead rely on the wheel speed sensors, typically a component of an anti-lock braking system, to detect and compare differences in the rotational speed of a vehicle's wheels, which correlate to differences in tire pressure.

We anticipate that new types of TPMS technology may be developed in the future that will be capable of meeting the standard's requirements. For example, such systems might incorporate aspects of both direct and indirect TPMSs (*i.e.*, hybrid systems). In concert with TPMS suppliers, tire manufacturers might be able to incorporate TPMS sensors directly into the tires themselves. In issuing a performance standard, NHTSA is cognizant of and seeks to encourage technological innovation.

¹¹ We note that some vehicle manufacturers authorize their dealers to replace the vehicle's factory-installed tires with other tires, including ones with a different size and/or recommended cold tire inflation pressure. The TPMS must perform properly with any such tires, because the vehicle could be equipped with those tires at the time of initial sale. Of course, the manufacturer would not have that responsibility if the dealer installed other tires without manufacturer authorization.

¹² As part of this final rule, we added two versions of the TPMS low tire pressure telltale and a TPMS malfunction telltale to Table 2 of FMVSS No. 101, *Controls and Displays* (since changed to Table 1).

¹³ We note that if a vehicle manufacturer elects to install a low tire pressure telltale that indicates which tire is under-inflated, the telltale must correctly identify the under-inflated tire. (See S4.3.2, as contained in the April 8, 2005 final rule.)

¹⁴ We note that the TPMS telltale(s) may be incorporated as part of a reconfigurable display, provided that all requirements of the standard are met.

Consistent with the policy set forth in NHTSA's February 14, 2005 final rule¹⁵ on certification requirements for vehicles built in two or more stages and altered vehicles, final-stage manufacturers and alterers must certify compliance for all covered vehicles manufactured on or after September 1, 2008 (no phase-in). However, final-stage manufacturers and alterers may voluntarily certify compliance with the standard prior to this date.

NHTSA decided to permit vehicle manufacturers to earn carry-forward credits for compliant vehicles, produced in excess of the phase-in requirements and manufactured between the effective date of this rule and the conclusion of the phase-in. These carry-forward credits could be used during the phase-in, but they could not be used to delay compliance certification for vehicles produced after the conclusion of the phase-in. Except for vehicles produced by final-stage manufacturers and alterers (who receive an additional year for compliance), all covered vehicles must comply with FMVSS No. 138 on September 1, 2007, without use of any carry-forward credits.

To further ease implementation, we decided to also provide carry-backward credits, whereby vehicle manufacturers may defer compliance with a part or all of the certification requirements for the first period of the phase-in, provided that they certify a correspondingly larger percentage of vehicles under the standard during the second period of the phase-in.

III. Petitions for Reconsideration

NHTSA received a total of 17 petitions for reconsideration of the April 8, 2005 final rule from: (1) The Alliance of Automobile Manufacturers (Alliance); (2) the Association of International Automobile Manufacturers, Inc. (AIAM); (3) BMW Group (BMW); (4) Continental Teves, Inc.; (5) EnTire Solutions, LLC (EnTire); (6) ETV Corporation Pty Limited (ETV); (7) European Tyre and Rim Technical Organisation (ETRTO); (8) Michelin North America, Inc. (Michelin); (9) M-Vision, Inc.; (10) NIRA Dynamics AB; (11) Public Citizen; (12) Rubber Manufacturers Association (RMA); (13) SmarTire Systems, Inc. (SmarTire); (14) Specialty Equipment Market Association (SEMA); (15) Sumitomo Rubber Industries (SRI); (16) Tire Industry Association (TIA); and (17) Volkswagen/Audi (VW/Audi). All of these petitions may be found in Docket No. NHTSA-2005-20586. (We note that

Public Citizen withdrew its petition for reconsideration in a letter dated June 16, 2005,¹⁶ and TIA withdrew its petition for reconsideration in a letter dated July 28, 2005.¹⁷ Consequently, we are not discussing these two petitions further in this document.)

The petitioners raised a variety of issues related to the TPMS standard, most of which were technical. These issues included ones involving the final rule's requirements for the under-inflation detection level, the under-inflation and malfunction detection times, functioning of the TPMS with spare tires, tire reserve load, compliance testing conditions and procedures, system disablement and reprogrammability, telltale issues, breadth of the malfunction detection requirement, minimum activation pressure, owner's manual requirements, sharing of TPMS servicing information, and phase-in calculations.

All of the issues raised in the petitions for reconsideration presently before us are addressed in the Discussion and Analysis section immediately below.

Effective Date. In light of the rapidly approaching October 5, 2005 start of the phase-in for FMVSS No. 138, we find that there is good cause to make these amendments effective 30 days after publication. The changes resulting from this final rule responding to petitions for reconsideration generally involve requested technical modifications and clarifications to the standard. We believe that vehicle manufacturers and other interested stakeholders would benefit from rapid implementation of these amendments. We note, however, that vehicle manufacturers may voluntarily comply with the requirements of this final rule immediately.

IV. Discussion and Analysis

A. Low Tire Pressure Warning Lamp Activation Requirements

The April 8, 2005 final rule required that each TPMS-equipped vehicle must illuminate a low tire pressure warning telltale not more than 20 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the third column of Table 1 of the standard for the corresponding type of tire, whichever is higher. The low pressure telltale must continue to

illuminate as long as the inflation pressure of the tire(s) remains below the activation threshold above and the ignition locking system is in the "On" ("Run") position, or until the system is manually reset in accordance with the vehicle manufacturer's instructions. (See S4.2, as contained in the April 8, 2005 final rule.)

Several petitioners requested that the agency modify the time period for the TPMS to detect and to provide a warning regarding significant under-inflation in one or more of a vehicle's tires. Some petitioners recommended a reduction in detection time (ETRTO, SmarTire Systems, ETV); others sought an increase in such time period (NIRA Dynamics, VW/Audi), and still another argued for some combination of the two (BMW).

ETRTO argued that the decision in the final rule to set a 20-minute detection time requirement for the TPMS low tire pressure warning (an increase from the 10-minute detection time proposed in the NPRM) may compromise safety, because driving for an additional 10 minutes on a significantly under-inflated tire could cause that tire to further deflate, overheat, and fail. ETRTO cautioned that "technical neutrality" should not be permitted to surpass safety concerns. Accordingly, the ETRTO petition urged NHTSA to adopt an under-inflation detection time of 10 minutes, as proposed in the NPRM. ETRTO did not provide supporting data to demonstrate the extent of tire degradation that would result from the under-inflation detection time adopted in the final rule.

In its petition, SmarTire Systems argued that repeated exposure of a tire to excessive heat build-up could cause cumulative deterioration of the tire's structural components, which could ultimately lead to tire failure. SmarTire Systems provided data intended to show that within 12 minutes of city driving (at approximately 30 mph) at a low ambient temperature, pressure build-up within a properly inflated tire is about 3 psi, resulting from temperature build-up within the tire. According to the petitioner, the longer detection time interval may exacerbate this phenomenon and could actually mask an under-inflation condition. SmarTire Systems argued that this situation potentially could have unintended consequences for testing, as well as negative safety implications. As a result, SmarTire Systems also recommended that the standard be modified to return to a 10-minute under-inflation time requirement, as originally proposed.

¹⁵ 70 FR 7414 (Feb. 14, 2005) (Docket No. NHTSA-1999-5673-54).

¹⁶ Docket No. NHTSA-2005-20586-31.

¹⁷ Docket No. NHTSA-2005-20586-35.

ETV argued that in order to maximize safety, the standard should be amended to require a TPMS to detect low tire pressure and to provide a warning immediately upon vehicle start-up. In making this argument, ETV analogized to other vehicle safety systems (e.g., air bags, ABS/brakes, seat belts) that provide a warning while the vehicle is stationary or parked (i.e., before the driver moves the vehicle into traffic).

An opposing viewpoint was presented in the petition submitted by NIRA Dynamics, which argued that the 20-minute under-inflation detection time for more than one tire is unnecessarily stringent in light of the circumstances that normally cause multiple-tire under-inflation. According to the petitioner, under-inflation in multiple tires usually results from slow diffusion over many months (loss of 1–2 psi per month), so 20-minute time requirements for TPMS calibration and under-inflation detection are not necessary. NIRA Dynamics also stated that indirect TPMSs update actual parameter values whenever a vehicle is driven (storing the latest values in memory when the engine is turned off). Therefore, the TPMS telltale would be expected to illuminate, regardless of the length of the last driving cycle, as soon as the accumulated driving time with an under-inflated tire is sufficiently long. Accordingly, NIRA Dynamics recommended that NHTSA increase the time period permitted for TPMS calibration and low pressure detection for multiple tires to one hour. The petitioner stated that such a change would permit the use of advanced indirect TPMS technologies, while maintaining the safety benefits of the standard. The petition of VW/Audi made an argument very similar to that of NIRA Dynamics on this point.

BMW also expressed its expectation that a TPMS-equipped vehicle would not need to be driven continuously during a single trip in order to detect low tire pressure, but instead, cumulative driving time gathered over a number of shorter trips should be adequate to detect and warn about significant tire under-inflation. Therefore, BMW reasoned that the TPMS would be unlikely to need the fully allotted detection time in most cases.

However, BMW recommended a slightly different solution from that proposed by NIRA Dynamics and VW/Audi. Specifically, BMW stated that NHTSA should revise the standard to require a 10-minute cumulative driving detection time for pressure loss in a single tire and a 60-minute cumulative driving detection time for pressure loss

in multiple tires, an approach that it believes would offer an equivalent or higher level of safety than the approach adopted in the final rule. Alternatively, BMW suggested that its approach be adopted as an optional means of compliance. BMW argued that its requested change also would make the standard more technology-neutral, because it stated that there are not any “production-ready” indirect TPMSs that can meet the standard’s 20-minute detection requirement under all circumstances.

NHTSA has carefully considered the arguments of petitioners seeking modifications to the standard’s low tire pressure warning lamp activation requirements. In general, the petitioners reiterated arguments raised at previous stages of this rulemaking and did not provide any new information to support their positions. Thus, we have decided to retain the low tire pressure activation requirements (including those related to system calibration) set forth in the April 8, 2005 final rule. Our reasoning is largely the same as expressed in that notice, which we summarize below.

We continue to believe that a 20-minute time period for under-inflation detection in one to four tires is appropriate, as is a 20-minute time period for TPMS calibration. The low tire pressure lamp activation requirements reflect the agency’s careful balancing of safety and practicability concerns viewed through the prism of available data.

As we noted in the final rule, TPMSs were not developed to warn the driver of extremely rapid pressure losses that could accompany a vehicle encounter with a road hazard or a tire blowout. According to the tire industry, those types of events account for approximately 15 percent of pressure loss cases.¹⁸ Presumably, a driver would be well aware of the tire problem in those situations, and the TPMS would provide little added benefit.

Instead, TPMSs’ benefits lie in warning drivers when the pressure in the vehicle’s tires is approaching a level at which permanent tire damage could be sustained as a result of heat buildup and tire failure is possible; this low level of inflation pressure generally results from a more measured pressure loss cause by a slow leak, defective valve, or diffusion. According to the tire industry, approximately 85 percent of all tire pressure losses are slow air losses that occur over hours, weeks, or months of vehicle use.¹⁹ In those cases,

a detection time of 20 minutes is not likely to pose a safety risk to the driving public.

The agency’s tire research suggests that even in a 25-percent under-inflated condition, the vehicle can be operated safely for this detection period without an appreciable risk of permanent damage or tire failure. NHTSA conducted testing on a variety of Standard Load P-metric tires at 20 psi with 100-percent load at 75 mph for 90 minutes on a dynamometer, and none of these tires failed.²⁰ This testing led the agency to conclude that warnings at less severe conditions will give drivers sufficient time to check and re-inflate their vehicles’ tires before the tires experience appreciable damage. Furthermore, analysis of public comments at the NPRM stage demonstrated that a detection time period shorter than 20 minutes could raise issues of detection accuracy for many systems, which could lead to false telltale illuminations (“nuisance warnings”), which in turn could negatively impact consumer acceptance of TPMSs.

Petitioners advocating a shorter time period did not provide any countervailing data to substantiate their assertions that a 20-minute detection time for a significantly under-inflated tire would lead to tire damage or tire failure. Although manufacturers are encouraged to provide the low tire pressure warning as quickly as possible, we believe that a 20-minute detection time is unlikely to result in any adverse safety consequences.

We also believe that a 20-minute detection time is consistent with our intention to articulate a standard that is practicable and technology-neutral. As noted in the final rule, we are aware of at least one indirect TPMS that is currently capable of meeting the standard’s four-tire, 25-percent under-inflation detection requirement within 20 minutes,²¹ and we expect that with additional time and development, other indirect and hybrid systems also would be able to meet the requirements of the standard.

We are not adopting ETRTO’s and SmarTire’s recommendations to reduce the time period for under-inflation detection time to 10 minutes because our tire data suggest that such change is not required for safety and because it would likely decrease the number of technologies available for complying with the standard. The same reasoning applies to our decision to deny ETV’s suggestion that the TPMS be required to

¹⁸ 67 FR 38704, 38728 (June 5, 2002) (Docket No. NHTSA–2000–8572–219).

¹⁹ *Id.*

²⁰ *Id.* at 38726.

²¹ Docket No. NHTSA–2004–19054–96.

provide a low tire pressure warning upon vehicle start-up (*i.e.*, before the vehicle is in motion).

Furthermore, we have decided not to extend the low tire pressure detection time beyond 20 minutes for multiple-tire under-inflation, as requested by NIRA Dynamics, VW/Audi, and BMW. As explained in the final rule, we believe that adverse safety consequences could result if the low tire under-inflation detection time were to extend beyond 20 minutes. As discussed in the final rule, available research suggests that average commuting times are less than 30 minutes in most cases.²² Many other trips, such as routine errands, may also involve drive times of less than 30 minutes. We expressed concerns that by increasing the low tire pressure detection time, it would be conceivable that consumers could be driving on significantly under-inflated tires for a potentially extended period of time without receiving a warning from the TPMS.

We also expressed concern that extending the low tire pressure detection time beyond 20 minutes could be problematic in other situations. For example, where a tire is punctured by a nail or is otherwise damaged, it may experience a moderately rapid pressure loss. As to damaged tires experiencing a relatively less rapid pressure loss, research into the rate of temperature buildup shows that for constant load, pressure, and speed conditions, tires generally warmed up and stabilized their temperatures within 15 minutes;²³ thus, the tire will rapidly reach a temperature that places stress on an under-inflated tire. In such cases, we are concerned about delaying the warning to the driver for too long. Therefore, in the April 8, 2005 final rule, we selected 20 minutes for the low tire pressure detection time, because we believed that it would maintain the utility of the TPMS and the safety benefits associated with that system.

We do not believe that the arguments presented by BMW and NIRA Dynamics regarding the cumulative nature of data gathering by the TPMS justifies changing the standard's low tire pressure detection time to one hour for multiple tires. We believe that a one-hour delay in warning the driver of significant tire under-inflation either when the system is new, reset, or reprogrammed is too long, particularly given that other systems can provide a warning more rapidly. BMW and NIRA

Dynamics did not provide any data indicating that tires could be operated safely for one hour after reaching a level of inflation that is 25 percent below placard pressure. Thus, we are concerned that an increase in the detection time for multiple-tire under-inflation could decrease the safety benefits of the rule. The same logic applies to BMW's suggestion that the time for malfunction detection be increased to one hour, a request that we are also denying, because a malfunctioning TPMS may not be available to warn about a concurrent tire under-inflation problem.

B. TPMS Malfunction Indicator Lamp (MIL) Activation Requirements

1. What Constitutes a TPMS Malfunction?

As part of the final rule establishing FMVSS No. 138, the TPMS-equipped vehicle's MIL telltale must provide a warning to the driver not more than 20 minutes after the occurrence of a malfunction that affects the generation or transmission of control or response signals in the vehicle's TPMS. (*See* S4.4, as contained in the April 8, 2005 final rule.) Paragraph S6(k) of the final rule's test procedures provides for the simulation of one or more TPMS malfunction(s) by disconnecting any electrical connection between TPMS components, or by installing a tire or wheel on the vehicle that is incompatible with the TPMS.

The details as to exactly what constitutes a TPMS malfunction were among the most extensively discussed issues in the petitions for reconsideration. Many petitioners who discussed this issue generally sought clarification regarding whether a malfunction warning would be required under specific situations. The malfunction-related issues raised in these petitions are addressed below.

The AIAM recommended amending S4.4(a) to narrow the definition of "TPMS malfunction" to limit that term to conditions where proper power supply is maintained to the TPMS. According to the AIAM petition, the standard, as currently written, would require installation of another electronic control module (ECM) in addition to the TPMS ECM in order to solely monitor MIL telltale operations, a largely redundant feature that would use up limited space behind the dashboard.

As its recommended solution, the AIAM recommended that the scope of S4.4(a) be limited to situations where the TPMS has power, which would allow the system to identify malfunctions in the TPMS ECM and

components such as the wheel sensors, signal antennae, or the presence of incompatible tires. In its petition, the AIAM argued that an interruption of power to the ECM or to the telltale (or to the connection between the ECM and the telltale) would be identifiable by failure to illuminate the TPMS MIL during bulb check. The AIAM also recommended modifying S6(l) to incorporate these conditions or by having S6(k) exclude these conditions from the procedures for creating a simulated TPMS malfunction.

The Alliance similarly argued in its petition that NHTSA should clarify that S6(k) of the test procedures, which permits "disconnecting the power source to any TPMS component," should not include disconnecting the power source to the telltale itself. The Alliance stated its belief that the telltale is an FMVSS No. 101 component (not a "TPMS component"), and that the situation where there is a loss of power to the telltale is already covered by the bulb check requirements in S4.3.3(a) or S4.4(b)(4)(i), thereby obviating the need for it to be covered under S4.4(a).

The Alliance also recommended a minor editorial change in S4.4(b)(3) that would modify that provision to read as follows: "Continues to illuminate the TPMS malfunction telltale under the conditions specified in S4.4(a) * * *." The standard currently references "S4.4."

EnTire Solutions argued that for TPMSs using Hardwired Vehicle Speed Input to the TPMS receiver, such input does not directly affect "the generation or transmission of control or response signals" in the vehicle's TPMS, and disconnecting vehicle speed input would not involve an electrical connection between "TPMS components" as called out specifically in S6(k) of the FMVSS No. 138 test procedures. According to EnTire Solutions, disconnecting vehicle speed input is "impractical" to diagnose since such a disconnect would not prevent the TPMS from providing under-inflation warnings while driving unless there are multiple problems with the system. Accordingly, EnTire Solutions requested clarification as to whether systems using Hardwired Vehicle Speed Inputs need to illuminate the TPMS MIL telltale upon disconnection of those inputs.

EnTire Solutions also requested a clarification regarding paragraph S6(k) of the TPMS test procedures, which provides an instruction regarding "disconnecting any electrical connection between TPMS components * * *." Specifically, the petitioner questioned whether the above language

²² 70 FR 18136, 18148 (April 8, 2005) (Docket No. NHTSA-2005-20586-1).

²³ See June 5, 2002 comments of the RMA (Docket No. NHTSA-2000-8011-64).

refers to connector-level interconnects or individual wires.

In its petition, EnTire Solutions stated that for systems using multiple ground paths for the receiver, it is “impractical” to diagnose a single ground path disconnection. EnTire Solutions recommended that the standard be amended to clarify that TPMS MIL activation will not be required in such cases. EnTire Solutions also asked if the system could be constructed such that the low pressure detection lamp could be illuminated by an auxiliary power source when the primary source is disconnected without illuminating the MIL. This question applies to low tire pressure telltales that indicate which tire is under-inflated and telltales that do not indicate which tire is under-inflated (*i.e.*, the ISO lamp).

NIRA Dynamics’ petition argued that it is not possible for vehicle manufacturers to meet the final rule’s certification requirement for the TPMS to be able to detect all replacement tires that are not compatible with the system, because it is not possible to know what tires will be offered in the future or how such tires will interact with current TPMSs. According to NIRA Dynamics, to make such a certification, vehicle manufacturers installing indirect TPMSs would be required to test their systems with all types of tires available on the market, both now and in the future, something which would not be possible for economic and practical reasons. Therefore, the petitioner recommended amending the final rule to state that the TPMS MIL requirements are limited to electrical and system transmission interruptions or failures that result in no sensor signal being sent to the TPMS control module.

In its petition, SRI argued that there are other conditions, albeit rare, that could affect the performance of TPMSs even if the control or response signals are properly transmitted. For example, SRI stated that a direct TPMS may not recognize that it is transmitting incorrect pressure data due to a sensor failure, or an indirect TPMS may not recognize that the sensitivity of the TPMS is lower due to certain tire characteristics. SRI essentially agreed with the argument of NIRA Dynamics, arguing that analyzing the influence of all replacement tires on the TPMS would be just as difficult as requiring that the TPMS be compliant with all replacement tires.

M-Vision’s petition questioned whether the standard’s requirements for malfunction detection would include instances where there is a mechanical failure of the TPMS, including ones resulting from a separation of the joint/

mount between the sensor assembly and the wheel, or separation of parts from the sensor assembly. According to M-Vision, a typical TPMS sensor weighs about 40 grams (1.41 ounces), and if such components come loose as a result of fatigue, they may generate high g-forces, cause internal damage to the tire, and ultimately lead to tire failure. The M-Vision petition also argued that a loose TPMS device rattling within the front wheel could lead to sudden wheel imbalance while the vehicle is in motion, potentially causing the driver to steer improperly. In order to prevent what it deems to be a significant safety risk, M-Vision recommended that the definition of a “TPMS malfunction” be modified to include mechanical failures, as described in its petition.

Continental Teves’ petition requested clarification of that portion of S4.4(a), which requires the TPMS MIL to illuminate “not more than 20 minutes after occurrence of a malfunction that affects the generation of transmission of control or response signals in the vehicle’s tire pressure monitoring system.” (Emphasis added.) We understand Continental Teves to be arguing that there are other circumstances or factors that could “affect” the system (*e.g.*, replacement tire construction) without preventing it from detecting and providing the requisite low tire pressure warning. Therefore, Continental Teves recommended changing the word “affects” to “inhibits” in S4.4(a), which it argued is consistent with the purpose of the TPMS MIL to alert the driver when the system is not functional.

Given that the TPMS MIL requirements were a relatively recent conceptual addition to FMVSS No. 138, it is not surprising that several petitioners requested clarification of those provisions. As noted above, such clarification requests included questions of coverage of specific potential malfunction, some of which the petitioners asserted could be difficult to detect. Our response, addressing these concerns about the standard’s malfunction requirements, is provided below.

In overview, we have decided to retain the final rule’s requirement for the TPMS MIL to illuminate whenever there is a malfunction that affects the generation of transmission of control or response signals in the vehicle’s tire pressure monitoring system. The agency continues to favor a broad detection requirement for the TPMS MIL and not one limited to specific malfunctions, because such restrictions would unnecessarily reduce the safety benefits of the TPMS. However, in response to

petitions (AIAM, Alliance) and in light of our own prior statements, we have decided to amend the standard’s test procedures for malfunction detection to explicitly state that telltale lamps will not be disconnected, because such malfunctions would be indicated during the bulb checks required under S4.3.3(a) and/or S4.4(b)(4). Consequently, the driver would be provided with information regarding the operability of the TPMS warning telltale(s) through alternative means.

We believe that this clarifying change is consistent with the final rule. In that notice, we stated that “the MIL should not be required to signal a burned out bulb as a TPMS malfunction, because that problem would already be identified during the check-of-lamp function at vehicle start-up.” (70 FR 18136, 18151 (April 8, 2005)) It was not our intention to require a redundant system solely to monitor the TPMS telltale(s). Similarly, the check-of-lamp function would alert the driver of malfunctions pertaining to processes directly tied to operation of the TPMS telltale(s) that necessitate servicing. When the driver takes the vehicle to the repair facility, the problem should be diagnosed and corrected, even though it may not be the one anticipated (*e.g.*, a problem with a wire rather than a burned out bulb). Thus, this subset of TPMS-related malfunctions would still be expected to be identified, but through a mechanism other than the MIL. Accordingly, we are amending S6(k) to delimit the types of system malfunctions that will be simulated during testing, consistent with the above. Specifically, we are adding the following statement to that paragraph: “When simulating a TPMS malfunction, the electrical connections for the telltale lamps shall not be disconnected.”

Furthermore, in response to EnTire’s requests for clarification regarding specific potential disconnections, we have decided that all electrically-powered components and devices that interface with the TPMS, including hardwired vehicle speed inputs, are potential candidates for disconnection under S6(k). Similarly, a single ground path in a multiple ground path system may be a candidate for disconnection during TPMS malfunction testing.

We are denying NIRA Dynamics’ request that the standard be amended to exclude incompatible aftermarket and replacement tires from the malfunctions that the TPMS malfunction indicator must be able to detect. As noted in the April 8, 2005 final rule, we believe that the ability of the TPMS malfunction indicator to detect incompatible tires is key to the long-term functionality of the

TPMS, and unless such a warning is provided, some drivers may lose the benefits of the system entirely. It is plainly foreseeable that most vehicles will outlast their original set of tires, so this requirement is necessary to ensure that consumers continue to receive the TPMS's important information related to low tire pressure.

The petition of NIRA Dynamics did not provide data to demonstrate the nature or extent of indirect TPMSs' alleged problems related to detection of incompatible tires. We do not believe that manufacturers would have to test all tires in order to determine which tires are incompatible with a given system, as NIRA Dynamics has suggested. Our understanding is that indirect TPMSs detect low tire pressure by comparing the differences in the rolling radius of the tires (*i.e.*, speed of the tires) and activating the low tire pressure telltale when the difference between wheel speeds reaches a certain pre-determined value. We further understand that for indirect TPMSs, incompatible tires are primarily tires with a relationship between rolling radius and tire pressure that is outside the range of the system or where the geometry of one tire is outside the tolerances of the system. In such cases, the TPMS must be able to distinguish between a tire with low pressure and one that is incompatible with the TPMS, and to then illuminate the MIL.

In direct TPMSs, tire incompatibility is primarily associated with tire construction materials and their potential attenuation of radio frequency signals generated by the TPMS unit (sensor) inside the tire. Based upon all available information, we have decided that TPMSs should continue to be required to alert the driver of a variety of system malfunctions, including installation of incompatible aftermarket or replacement tires. We believe that this approach will ensure continued, long-term TPMS functionality, which is consistent with Congress' intention to improve tire and vehicle safety, as expressed in the TREAD Act.

We have decided not to adopt M-Vision's recommendation that we amend the standard's malfunction detection requirement to specifically address mechanical failures of the system, such as a separation of wheel-mounted TPMS components. We believe that severe mechanical failures of TPMS wheel components would trigger the TPMS malfunction indicator in most cases, because a severe mechanical problem with a sensor would retard communications between the sensor and the receiver. In addition, it would be difficult to simulate a

mechanical malfunction of a wheel component without dismounting the tire from the wheel, and potentially damaging the TPMS. Furthermore, we have not been presented with any data to demonstrate that mechanical failures, such as those described in the M-Vision petition, are likely to arise in actual vehicles or the consequences thereof. If situations involving mechanical failures of TPMS wheel components were to develop frequently, those types of potential TPMS failures may be determined to be defects, which would be properly addressed by NHTSA's Office of Defects Investigation.

Regarding Continental Teves' recommendation for a wording change under the standard's malfunction detection requirement (S4.4), specifically to state that a malfunction "inhibits" rather than "affects" the generation or transmission of control or response signals in the vehicle's TPMS, we have decided to deny that request. Overall, the rationale offered by Continental Teves in support of its recommended change to the definition of a TPMS malfunction was not cogent and seemed incomplete. For example, the petition mentioned a hybrid system, but it did not explain how it operates. We do not believe that the Continental Teves petition provides a sufficient basis to support its recommended change to the standard.

We have decided to grant the Alliance's request for a technical change in S4.4(b)(3) that would modify that provision to read as follows: "Continues to illuminate the TPMS malfunction telltale under the conditions specified in S4.4(a) * * *." Although we do not believe that the standard's current reference to S4.4 in that provision is likely to cause any confusion or additional burden, we agree that the Alliance's recommended specification is more precise.

2. MIL Disablement

The final rule did not contain any provision for MIL disablement, and the preamble discussed the agency's rationale for not permitting system disablement (*see* section IV.C.2(c), as contained in the April 8, 2005 final rule).

In its petition, SEMA expressed support for the agency's decision in the final rule not to permit disablement of the TPMS malfunction indicator lamp. However, SEMA requested clarification as to whether the MIL may be disabled (made inoperative) for the purpose of replacing the TPMS with an equivalent aftermarket TPMS that also meets the requirements of the FMVSS No. 138. For example, SEMA suggested that a

consumer may wish to "upgrade" the vehicle's TPMS in situations where that person encounters incompatible replacement tires. If disablement of the MIL were permitted for such replacement purpose, SEMA argues that it would alleviate SEMA's concerns that consumers will choose not to install aftermarket or replacement rims and tires because they would lose the benefits of the MIL or have to accept driving with the MIL illuminated. Thus, SEMA recommended that NHTSA clarify that it is permissible to make the TPMS inoperative in order to replace the system with another TPMS that is also compliant with FMVSS No. 138.

We do not believe that it is necessary to amend the TPMS standard in order to permit suppliers and service technicians to install aftermarket components and systems that comply with FMVSS No. 138. This principle holds for our safety standards generally. We believe this approach is appropriate for the following reasons.

By way of background, the disablement for repair/replacement concept is addressed in 49 U.S.C. 30122(b), which provides:

A manufacturer, distributor, dealer, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard prescribed under this chapter [49 U.S.C. 30101 *et seq.*] unless the manufacturer, distributor, dealer, or repair business reasonably believes the vehicle or equipment will not be used (except for testing or a similar purpose during maintenance or repair) when the device or element is inoperative.

When an automotive service business brings a vehicle into its facility for repair, replacement, or servicing of vehicle systems or components, it stands to reason that certain operating components or systems may need to be disabled in order to effectuate those changes. Furthermore, while such changes are pending, we expect that the vehicle would not be engaged in on-road use. By the time the vehicle is again returned to on-road use, the business must ensure that aspects of the vehicle covered by applicable FMVSSs have been made inoperative. With that proviso, upgrades to the vehicle of the type mentioned by SEMA would be permissible, even if the standard does not explicitly state it.

C. Telltale Requirements

The final rule requires each TPMS to include a low tire pressure warning telltale that is mounted inside the occupant compartment in front of and

in clear view of the driver and which is identified by one of the symbols for the "Low Tire Pressure Telltale" in Table 2 of FMVSS No. 101, *Controls and Displays*. The low tire pressure warning telltale is required to illuminate under the conditions specified in S4.2 of FMVSS No. 138, and it must also perform a check of lamp function when the ignition locking system is activated to the "On" ("Run") position or a position between "On" ("Run") and "Start" that is designated by the manufacturer as a check position. (See S4.3, as contained in the April 8, 2005 final rule.)

Under the final rule, the TPMS-equipped vehicle is also required to be equipped with a TPMS malfunction indicator (beginning September 1, 2007). This malfunction indicator may be provided either through a separate, dedicated telltale or through a combined low tire pressure/TPMS malfunction telltale. For the separate TPMS MIL, the telltale must be mounted inside the occupant compartment in front of and in clear view of the driver and be identified by the word "TPMS," as described under "TPMS Malfunction Telltale" in Table 2 of FMVSS No. 101. The dedicated TPMS malfunction telltale is required to illuminate under the conditions specified in S4.4 of FMVSS No. 138 for as long as the malfunction exists, and it must also perform a check of lamp function when the ignition locking system is activated to the "On" ("Run") position or a position between "On" ("Run") and "Start" that is designated by the manufacturer as a check position. (See S4.4(b), as contained in the April 8, 2005 final rule.)

If the vehicle manufacturer elects to provide a combination telltale, it must meet the requirements of S4.2 and S4.3, as discussed above, and also indicate a TPMS malfunction as follows. While the ignition locking system is activated to the "On" ("Run") position, upon detection of a TPMS malfunction, the combination telltale must flash for a period of at least 60 seconds but no longer than 90 seconds. After this period of prescribed flashing, the telltale must remain continuously illuminated as long as the malfunction exists and the ignition locking system is activated to the "On" ("Run") position. This flashing and illumination sequence must be repeated each time the ignition locking system is activated to the "On" ("Run") position until the situation causing the malfunction has been corrected. (See S4.4(c), as contained in the April 8, 2005 final rule.)

As discussed below, the Alliance petition raised issues related to the

operation of the TPMS related telltale(s), as well as the timing for implementing the telltale requirements. More specifically, the Alliance's petition sought clarification regarding how a combined TPMS telltale should operate when sequential malfunctions occur. The Alliance identified the following potential approaches: (1) Have one flashing sequence cover all TPMS malfunctions; (2) Have each malfunction trigger a separate warning, or (3) Extend the length of the flashing sequence to indicate more than one malfunction. The recommendation of the Alliance was to leave the choice among these approaches to vehicle manufacturer discretion.

The Alliance also petitioned to correct what it perceives to be a lack of synchronization between the TPMS telltale requirements in FMVSS No. 138 and in FMVSS No. 101. Specifically, the Alliance stated that vehicle manufacturers have no compliance requirements vis-à-vis FMVSS No. 138 until October 5, 2005, but there is not any corresponding compliance date specified in FMVSS No. 101 regarding the TPMS-related symbols (which arguably results in a compliance date of April 8, 2005 for those telltale symbols). According to the Alliance, failure to remedy this apparent oversight would negatively impact the voluntary introduction of TPMSs that are not certified to FMVSS No. 138, and the Alliance stated that substantial lead time is needed to incorporate such display changes. Therefore, the Alliance recommended adding two footnotes to Table 2 of FMVSS No. 101 that would exempt vehicles from compliance with the TPMS symbol requirements for vehicles whose TPMSs are not certified as compliant with FMVSS No. 138 during the phase-in period for that standard.²⁴

The Alliance also recommended adding a new Footnote 10 to that table as follows: "Display requirements of the low tire pressure telltale are mandatory only for vehicles compliant with the requirements of FMVSS No. 138 at the date of vehicle manufacture."

Regarding the issue of sequential (multiple) malfunctions, we have decided that for vehicles with a combined low tire pressure/malfunction warning indicator, the telltale must flash for a single period of at least 60 seconds but no longer than 90 seconds and then remain continuously

illuminated. This sequence will serve to alert the driver to any and all TPMS malfunctions detected by the system. We believe that once a consumer is warned that a TPMS malfunction exists, that person would be expected to take the vehicle to a service professional to diagnose and correct the problem. This reaction is not likely to change depending upon the number of malfunctions, and at such time, we anticipate that all conditions impairing operation of the TPMS would be resolved. Furthermore, we have decided to specify how sequential malfunctions would be indicated in order to prevent confusion on the part of the consumer and to ensure that TPMSs provide a consistent message across the fleet. Accordingly, we have made minor technical changes to S4.4(c)(2) of the standard to clarify this matter.

Regarding the issue of the coordination of the compliance dates for the requirement of FMVSS No. 138 and Table 2 of FMVSS No. 101, we agree that it was not the agency's intention to require vehicle manufacturers to comply with the requirements for the TPMS telltale(s) in advance of the requirements for the installation of FMVSS No. 138-compliant TPMSs themselves. Vehicle manufacturers are not required to install TPMSs until October 5, 2005, and compliance could potentially be postponed if they elect to use carry-backward credits. During the phase-in, manufacturers could install other TPMSs that are not necessarily compliant with FMVSS No. 138, so we would not expect those vehicles to comply with the TPMS-related requirements of FMVSS No. 101, although we would expect vehicles voluntarily certified to FMVSS No. 138 to also meet the requirements of FMVSS No. 101. Furthermore, the TPMS malfunction telltale is not required until September 1, 2007, a fact reflected in FMVSS No. 138 but not in FMVSS No. 101.

During our consideration of these petitions for reconsideration, the agency published a final rule updating FMVSS No. 101 (70 FR 48295 (August 17, 2005)).²⁵ At that time, we were already aware of this synchronization issue. Therefore, in order to clarify the relationship between the TPMS-related requirements of FMVSS Nos. 138 and 101, we included an amendment in that final rule to modify the relevant table in FMVSS No. 101.

We note here that the above final rule for FMVSS No. 101 reorganized that standard to some extent, and consequently, the TPMS telltale

²⁴ The Alliance recommended that the following statement be added to Footnote 9 of FMVSS No. 101 Table 2: "Display requirements for Tire Pressure Monitoring System Malfunction Telltale are effective for vehicles manufactured on or after September 1, 2007."

²⁵ Docket No. NHTSA-2005-22113-1.

provisions are now contained in Table 1, rather than Table 2. Accordingly, we are revising S4.3.1(b) and S4.4(b)(2) of FMVSS No. 138, in order to properly reference the TPMS-related provision of FMVSS No. 101.

Returning to our discussion of the three footnotes for the TPMS-related telltales incorporated into FMVSS No. 101, these footnotes read as follows.

Footnote 13, which is applied to the symbols and words for all three TPMS telltales (*i.e.*, the combined telltale which does not indicate which tire is under-inflated, the combined telltale which does indicate which tire is under-inflated, and the dedicated TPMS MIL), provides, "Required only for FMVSS compliant vehicles." Thus, if the vehicle is certified to FMVSS No. 138, the TPMS telltale in question must comply with the requirements in Table 2.

Footnote 14, which applies only to the dedicated TPMS MIL telltale, makes clear that a separate telltale is not required; it states, "Alternatively, either low tire pressure telltale may be used to indicate a TPMS malfunction. See FMVSS 138."

Footnote 15 also applies only to the dedicated TPMS MIL, stating, "Required only for vehicles manufactured on or after September 1, 2007." For vehicle manufacturers that elect to provide a separate telltale for the MIL, the telltale would need to display "TPMS" after that date. Again, vehicle manufacturers with vehicles certified to FMVSS No. 138 could voluntarily certify that they comply with the MIL requirements before that date, in which case they would be subject to this TPMS telltale requirement, if they chose to install a dedicated MIL telltale. Because the necessary changes have already been incorporated into FMVSS No. 101, no additional amendments to the regulatory text are required by this final rule on this issue.

D. Tire-Related Issues

1. Spare Tires

The April 8, 2005 final rule does not require the TPMS to monitor the pressure in a spare tire (either compact or full-sized), either while stowed or when installed on the vehicle.

In its petition, ETV expressed its opinion that the TREAD Act requires the TPMS to continuously monitor all four active tires at all times while the vehicle is being driven. ETV then argued that because the April 8, 2005 final rule does not require the spare tire (whether compact or full-size) to be equipped with a TPMS sensor (for direct systems), this would render the TPMS

either entirely or partially inoperable, in contravention of the TREAD Act. Furthermore, ETV expressed concern that in such situations, the TPMS MIL may illuminate, thereby masking other tire or system faults. Accordingly, ETV recommended that the standard be amended to require the spare tire to be fitted with a TPMS sensor so that the TPMS may continue to function in compliance with the standard when a spare tire is in use.

We have decided not to adopt ETV's recommendation that we modify the standard to require the TPMS to operate when a spare tire is installed on the vehicle. We came to this decision for a number of reasons, including the knowledge on the part of drivers that temporary tires are not intended for extended use, the fact that compact spare tires pose operational problems for both direct and indirect TPMSs, the disincentive for manufacturers to supply a full-size spare (or any spare tire) if TPMS compliance were required, and the increased cost of the rule, with little if any safety benefit, if a spare tire must be monitored. In fact, as the standard is currently written, illumination of the TPMS MIL when a spare tire is installed may have the beneficial effect of encouraging the driver to rapidly repair or replace the regular tire, thereby permitting the spare tire to be returned to emergency reserve status. As noted in the final rule, NHTSA will not conduct compliance testing under Standard No. 138 with spare tires installed on the vehicle.

2. Tire Reserve Load

The April 8, 2005 final rule establishing FMVSS No. 138 does not include any separate requirements for tire reserve load beyond those already specified under our FMVSSs for tires.

Consistent with the position in its earlier petition for rulemaking and its comments on the NPRM, the RMA argued that the April 8, 2005 final rule for TPMS does not adequately protect motor vehicle operators from the risk of driving on significantly under-inflated tires, because it does not provide a warning when one or more of the vehicle's tires has insufficient pressure to carry the actual load on the tires. According to the RMA, the final rule's TPMS activation threshold fails to ensure that consumers will receive adequate warning before the tire's inflation pressure falls below the minimum level required to support the actual load (or if unknown, the maximum load) on the tire. The RMA did not provide any new data on this topic, and for the sake of brevity, it did not repeat in its petition all of its earlier

arguments and reasoning as to the need for a tire reserve load. Instead, it incorporated its earlier submissions by reference.²⁶ The RMA's petition repeated its earlier recommendation that NHTSA should establish a reserve load requirement to ensure that the tires can safely carry the vehicle maximum load (*i.e.*, not drop below the minimum values presented in the load/pressure tables of the Tire and Rim Association (TRA) Year Book), when the vehicle's tires are under-inflated by 25 percent.

ETRTO made essentially the same arguments as the RMA regarding the need for a tire reserve load requirement, in order to maximize consumer safety as required under the TREAD Act. We note that the RMA and ETRTO petitions for reconsideration provided no new data on the tire reserve load issue.

We have decided to deny RMA's and ETRTO's request that we establish a tire reserve load requirement, based upon the reasoning cited in earlier agency pronouncements on this issue, as summarized below. In a notice published in the **Federal Register** on May 19, 2005, the agency denied the RMA's petition for rulemaking seeking to establish its recommended tire reserve load because neither the RMA's nor the agency's data demonstrated a safety need for such a requirement.²⁷ Specifically, the available evidence did not demonstrate a reliable or conclusive relationship between tires with little or no pressure reserve and a higher rate of tire failures in the field. For a more complete discussion of the tire reserve load issue, please consult the above-referenced notice responding to the RMA petition.

We further believe that the tire reserve load requirement requested by the RMA and ETRTO is unnecessary in light of certain other requirements in our tire standards. By way of explanation, FMVSS No. 110, *Tire Selection and Rims*, mandates, among other things, that all passenger cars sold in the United States be equipped with tires that are capable of carrying the vehicle's maximum loaded vehicle weight at the manufacturer's recommended cold inflation pressure (vehicle placard pressure). Multipurpose passenger vehicles, trucks, buses and trailers must be fitted with tires that are capable of supporting the vehicle's gross axle

²⁶ Specifically, the RMA referenced its submissions to Docket No. NHTSA-2000-8572 (entry numbers 116, 172, 228, 238, 241, 260, 261, 262, 263, and 271) and to Docket No. NHTSA-2004-19054 (entry number 34).

²⁷ 70 FR 28888 (May 19, 2005) (Docket No. NHTSA-2005-20967-8).

weight rating (GAWR).²⁸ In most cases, vehicle manufacturers meet these requirements by consulting standardized tables for tire size, loading, and inflation pressure published by the Tire and Rim Association or other international tire industry organizations.²⁹

Vehicle manufacturers may, at their discretion, specify a higher placard pressure for the tires fitted to their products than that provided by the TRA tables to support the vehicle's maximum load. This additional tire pressure is known as "tire pressure reserve." Within bounds, an increase in tire pressure results in an increase in load carrying capacity. The extra load carrying capacity realized, because of the additional tire pressure, is called the "tire load reserve."

As noted in our denial of the RMA's petition, we believe that the existing requirements in our tires standards provide an adequate pressure reserve. FMVSS No. 110 also includes a requirement for a tire pressure reserve based on vehicle normal load.

"Vehicle normal load" is that load on an individual tire that is determined by distributing to each axle its share of the curb weight, accessory weight, and occupant weight and dividing the result by two. The number of occupants used to determine the "normal load" is defined in FMVSS No. 110 as two persons for a vehicle with four seating positions, and three persons for a vehicle with five seating positions. The current standard requires that the vehicle normal load on a tire shall not be greater than 88 percent of the tire's maximum load rating as marked on the tire sidewall.

NHTSA published a final rule upgrading the standards applicable to tires on June 26, 2003.³⁰ The upgraded

version of FMVSS No. 110 specifies that the vehicle normal load on each tire must not exceed 94 percent of the tire's load rating at the placard pressure for that tire. This change in calculation of vehicle normal load is intended to more accurately reflect the load based on the vehicle's placard pressure, which may vary from vehicle to vehicle, even when the same tires are used. We anticipate that this change may result in a placard pressure increase of 1–2 psi.³¹

3. Minimum Activation Pressure

Under S4.2 of the standard, the TPMS must illuminate a low tire pressure warning telltale not more than 20 minutes after the inflation pressure in one or more of the vehicle's tires, up to a total of four tires, is equal to or less than either the pressure 25 percent below the vehicle manufacturer's recommended cold inflation pressure, or the pressure specified in the 3rd column of Table 1 of the standard for the corresponding type of tire, whichever is higher. Table 1 is titled "Low Tire Pressure Warning Telltale—Minimum Activation Pressure" (MAP). The third column of Table 1 specifies the following MAP values: (1) P-metric, Standard Load (140 kPa/20 psi); (2) P-metric, Extra Load (160 kPa/23 psi); (3) Load Range C (200 kPa/29 psi); (4) Load Range D (240 kPa/35 psi); and (5) Load Range E (240 kPa/35 psi).

The Alliance acknowledged the modifications to the MAP values in the final rule as an improvement over the values proposed in the NPRM. However, the Alliance nevertheless recommended that the standard should be modified further to permit light truck Load Range D and E tires to be used across the safe operating range of inflation pressures for those tires that are specified in the load/pressure tables of the TRA Year Book. According to the Alliance, TPMSs require a 7 to 10 psi differential between recommended cold inflation pressure and the TPMS low tire pressure warning threshold in order to allow for environmental effects, manufacturing

variation, and other system variables, while avoiding nuisance warnings. Therefore, in order to specify a placard pressure of 35 psi, the TPMS activation threshold would need to be lowered to 25 to 28 psi.

As discussed in its earlier petition for rulemaking on MAPs,³² the Alliance argued that the MAP values in Table 1 are likely to prove problematic for certain vehicle applications. The Alliance stated that it had previously submitted certain component and vehicle test data in support of its petition, including LT tire test data supplied by General Motors (data from endurance tests, low inflation pressure tests, laboratory and on-vehicle bead unseating tests).³³ Based upon such data, the Alliance has concluded that there is not a demonstrated safety need for the specific MAP values for LT tires set forth in Table 1. According to the Alliance, more stringent requirements, testing at higher tire deflection levels, are already set by paragraph S6.4, "Low Inflation Pressure Performance," of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles*, so there is arguably not any need for such a requirement under FMVSS No. 138.

Therefore, in its petition, the Alliance identified three recommended options for addressing the MAP issue: (1) Eliminate the MAP requirement for LT tires; (2) adopt the MAP values proposed by the Alliance, or (3) adopt 29 psi as the MAP for all LT tires (Load Range C, D, and E).

In its petition, the RMA expressed an opposing viewpoint on the MAP issue, objecting to the decision in the final rule to lower the MAP for Load Range D and E tires to 35 psi. The RMA argued that a MAP of 35 psi for these tires will not ensure that consumers receive an adequate warning before the tires become significantly under-inflated or over-inflated. The RMA recommended that the agency conduct further rulemaking related to MAPs, including issuance of an NPRM, so that the interested public has an opportunity to provide additional information and to fully participate in the resolution of this issue. (Michelin's petition made the same arguments on this issue as the RMA petition, and it incorporated the RMA's document by reference.)

After careful consideration of the petitions addressing the MAP issue, we have decided to confirm and retain the MAP values for LT tires as presented in

²⁸ This requirement was adopted from FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars*. Before TREAD Act-related upgrades were made (which also consolidated NHTSA's tire standards), passenger cars, and non-passenger cars regardless of their gross vehicle weight rating (GVWR), were covered by FMVSS Nos. 110 and 120 respectively.

²⁹ Paragraph S4.3.1(c) of FMVSS No. 110 permits the use of standard tire pressure/load tables contained in publications listed in paragraph S4.4.1(b) of FMVSS No. 109 that are current at the date of manufacture of the tire or any later date. Specifically, publications by any of the following international industrial organizations may be used: (1) The Tire and Rim Association, (2) The European Tyre and Rim Technical Organization, (3) Japan Automobile Tire Manufacturers' Association, Inc., (4) Tyre & Rim Association of Australia, (5) Associaçao Latino Americana de Pneus e Aros Brazil, or (6) The South African Bureau of Standards.

³⁰ The June 23, 2003 final rule pertained to FMVSS No. 109, *New Pneumatic Bias Ply and Certain Specialty Tires*, FMVSS No. 110, *Tire*

Selection and Rims for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 Pounds) or Less, FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles*, FMVSS No. 120, *Tire Selection and Rims for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds)*, and FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles*. See 68 FR 38116 (June 23, 2003) (Docket No. NHTSA-2003-15400-1).

³¹ The agency has conducted a FMVSS No. 110 vehicle normal load evaluation and has concluded that almost all light vehicles could meet a revised criteria for load reserve based on 94 percent of placard pressure with only a minor increase (e.g., 1 or 2 psi) in inflation pressure to accommodate the new requirement. *Id.* at 38141.

³² Docket No. NHTSA-2000-8572-265 and 266.

³³ The petition also stated that additional data related to the MAP issue were supplied by the Alliance and GM at Docket No. NHTSA-2000-8572-268 and Docket No. NHTSA-2004-19054-95.

Table 1. As noted in the final rule, the TRA Year Book includes load/pressure relationships for Load Range D and E tires from 80 psi (maximum inflation pressure) down to 35 psi. This value provides a benchmark, indicating that a Load Range D or E tire could be safely operated at an inflation pressure as low as 35 psi. This approach is analogous to the approach we used in selecting the MAP values for P-metric tires, although the various tire industry publications exhibited more consistent values for P-metric tires.

The MAP values in Table 1 provide a floor value for activation of the TPMS for given classes of tires, and we do not believe that it is consistent with safety to eliminate the MAP for Load Range D and E tires. The MAPs play an important role in the TPMS's ability to provide a timely warning to the driver regarding low tire pressure. We believe that the minimum operating pressure recommended for Load Range D and E tires in the TRA Year Book is an adequate and safe value for the MAP. We are aware that a MAP of 35 psi effectively requires that the minimum vehicle placard pressure be 40 to 45 psi to ensure proper TPMS function. However, we expect that the MAP issue raised by the Alliance and GM is only likely to impact a small percentage of vehicles using LT tires (*i.e.*, typically vehicles with a GVWR of over 8,500 pounds).³⁴ Furthermore, our analysis of the available data has led us to conclude that the MAP values currently presented in Table 1 should not have a significant negative impact upon vehicle handling or the propensity for rollover, so we believe that the current MAP values provide a long-term resolution of this issue without the need for further rulemaking.³⁵

With regard to the RMA and Michelin petitions, neither of them provided any data or rationale explaining why the agency should initiate new, separate rulemaking to address the MAP issue for Load Range D and E tires. These petitions merely provided a conclusory statement that MAP values of 35 psi will not ensure that consumers will be warned before the tires are dangerously overloaded or under-inflated.

E. Owner's Manual Requirements

Under S4.5, the owner's manual of each vehicle certified as complying with FMVSS No. 138 must provide an image of the Low Tire Pressure Telltale symbol (and an image of the TPMS Malfunction Telltale warning ("TPMS")), if a dedicated telltale is utilized for this

function) with the following statement in English:

Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should determine the proper inflation pressure for those tires.)

As an added safety feature, your vehicle has been equipped with a tire pressure monitoring system (TPMS) that illuminates a low tire pressure telltale when one or more of your tires is significantly under-inflated. Accordingly, when the low tire pressure telltale illuminates, you should stop and check your tires as soon as possible, and inflate them to the proper pressure. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability.

Please note that the TPMS is not a substitute for proper tire maintenance, and it is the driver's responsibility to maintain correct tire pressure, even if under-inflation has not reached the level to trigger illumination of the TPMS low tire pressure telltale.

[The following paragraph is required for all vehicles certified to the standard starting on September 1, 2007 and for vehicles voluntarily equipped with a compliant TPMS MIL before that time.] Your vehicle has also been equipped with a TPMS malfunction indicator to indicate when the system is not operating properly. [For vehicles with a dedicated MIL telltale, add the following statement: The TPMS malfunction indicator is provided by a separate telltale, which displays the symbol "TPMS" when illuminated.] [For vehicles with a combined low tire pressure/MIL telltale, add the following statement: The TPMS malfunction indicator is combined with the low tire pressure telltale. When the system detects a malfunction, the telltale will flash for approximately one minute and then remain continuously illuminated. This sequence will continue upon subsequent vehicle start-ups as long as the malfunction exists.] When the malfunction indicator is illuminated, the system may not be able to detect or signal low tire pressure as intended. TPMS malfunctions may occur for a variety of reasons, including the installation of replacement or alternate tires or wheels on the vehicle that prevent the TPMS from functioning properly. Always check the TPMS malfunction indicator after replacing one or more tires or wheels on your vehicle to ensure that the replacement or alternate tires and wheels allow the TPMS to continue to function properly.

For vehicles that do not come with an owner's manual, the required information must be provided in writing to the first purchaser of the vehicle (S4.5(c)).

As provided under S4.5(b), vehicle manufacturers may include information

in the owner's manual about the time for the TPMS telltale(s) to extinguish once the low tire pressure condition or the malfunction is corrected. Vehicle manufacturers may also include information in the owner's manual about the significance of the low tire pressure warning telltale illumination, a description of corrective action to be undertaken, whether the TPMS functions with the vehicle's spare tire (if provided), and how to use a reset button (if one is provided).

Petitioners recommended changes to the content of the owner's manual language, and they also requested additional lead time for implementing the standard's owner's manual provisions. These arguments are presented immediately below.

1. Lead Time

The Alliance argued that because the owner's manual requirements of FMVSS No. 138 do not provide any additional lead time for those provisions, they significantly impact the ability of manufacturers to earn and apply carry-forward and carry-backward credits. The Alliance stated that the text for the required owner's manual language differs substantially from that incorporated in the June 2002 final rule (since vacated) or September 2004 NPRM, and its petition also stated that current owner's manuals of TPMS-equipped vehicles contain a statement consistent with the language provided in one or the other of those two notices.

The Alliance stated that preparation of owner's manuals normally involves a one-to-two year process, something that the Alliance claims that NHTSA has recognized in other proceedings.³⁶ Although at first blush these owner's manual changes may seem like a simple matter, the Alliance argued that the multiplicity of brands and models significantly increases the complexity of this task. Furthermore, the Alliance's petition stated that, overall, since the time of the June 5, 2002 final rule, "the different versions of the [required owner's manual] text differ only in detail, and not in substance or intent." As a result, the Alliance argued that

³⁶ The Alliance referenced NHTSA's final rule responding to petitions for reconsideration of the Tire Safety Information rulemaking (see 68 FR 33655 (June 5, 2003) (Docket No. NHTSA-2003-15278-1)). In that rule, the agency decided to extend the final rule's lead time (of less than one year) for an additional year, in part because of the need for vehicle manufacturers to effect changes to owner's manuals. The notice stated, "Additionally, for all car lines, manufacturers will be required to make extensive changes to their owner's manuals and these changes typically require a longer lead time than that provided by the final rule." 68 FR 33655, 33656 (June 5, 2003).

³⁴ Docket No. NHTSA-2000-8572-265.

³⁵ DOT HS 809 701.

such differences do not justify hindering manufacturers' ability to introduce TPMSs in an expedited fashion. For the above reasons, the Alliance recommended delaying the effective date for all TPMS-related owner's manual requirements until September 1, 2006.

The AIAM's petition raised many of the same arguments regarding the need for lead time for the owner's manual requirements, both for vehicles that manufacturers intend to earn carry-forward credits, as well as for other vehicles. However, the AIAM's petition differed in that it asked NHTSA to delay the standard's compliance date for TPMS-related owner's manual requirements until September 1, 2007. Because that is the date for mandatory compliance with the standard's malfunction detection requirements, the AIAM reasoned that such date would allow all required owner's manual language related to the TPMS to be incorporated at the same time.

After careful consideration of these petitions, we have decided to delay the compliance date for the TPMS owner's manual requirement, thereby granting petitions' request for additional lead time to incorporate the required language into the vehicle owner's manual. We have decided to postpone compliance with the owner's manual requirement until September 1, 2006, and we are modifying S4.5(a) of the standard accordingly. (We note that the compliance date for incorporation of the required language related to the TPMS MIL is has not changed (*i.e.*, September 1, 2007).) We believe that this request can be granted without negatively impacting vehicle safety. First, delay of the owner's manual requirements would not impact the functioning of the TPMS or the warnings that it provides. Furthermore, we expect that even before that date, TPMS-equipped vehicles would have some owner's manual statement presenting relevant information to the consumer. This change should facilitate vehicle manufacturers' ability to earn carry-forward and carry-backward credits for TPMSs that otherwise comply with FMVSS No. 138 since publication of the April 8, 2005 final rule.

We specifically note that delay in the compliance date for the standard's owner's manual requirements does not impact vehicle manufacturers' responsibility to provide TPMSs complying with FMVSS No. 138 on a schedule consistent with the phase-in commencing on October 5, 2005, as set forth in the April 8, 2005 final rule.

We are denying the AIAM's request to extend the vehicle owner's manual

requirements until September 1, 2007. Based upon our analysis, we believe that a September 1, 2006 compliance date is practicable, so we do not see any reason to further delay presentation of a standardized message to consumers regarding the presence and function of TPMSs.

2. Content of Required Statement

In its petition, ETRTO argued that the provisions in the April 8, 2005 final rule dealing with the owner's manual language may be inadequate to warn consumers regarding potential TPMS shortcomings. Accordingly, ETRTO recommended that S4.5 of the standard be amended to: (1) Clearly explain the precautions that the consumer must take to ensure proper functioning of the TPMS for systems equipped with a manual reset feature (*e.g.*, to prevent recalibration at an incorrect inflation level); (2) explicitly state that the TPMS may not alert the driver for a 20-minute period immediately after a malfunction occurs, until such time as the TPMS can detect the malfunction, and (3) require, rather than permit, vehicle manufacturers to provide the information specified under S4.5(b).

SRI recommended amending S4.5(a) by supplementing the required statement in the vehicle owner's manual with the following additional language to make consumers aware that other anomalous situations may exist:

When illuminated, the malfunction warning light indicates that the TPMS is not receiving a signal from the inflation pressure or wheel sensors. However, even if the malfunction warning light is not illuminated there can be conditions that can cause the system to be less sensitive to the tire pressure loss. It is the driver's responsibility to maintain correct tire pressure even if both TPMS and malfunction indicator lamps are not illuminated.

SRI argued that its recommended owner's manual language is necessary because it is not possible to anticipate all problems that would cause inaccuracies in a TPMS's functioning, some of which may not be capable of being detected by the TPMS malfunction indicator.

After careful review, we have decided that no further modifications to the vehicle owner's manual requirements are required as a result of the ETRTO and SRI petitions. We believe that the language set forth in the April 8, 2005 final rule provides a clear message to the consumer regarding the presence and function of the TPMS installed in the vehicle, as well as its supporting role to the vehicle operator's ongoing responsibility for regular tire maintenance. We believe that the

required owner's manual statement accomplishes its purpose, so it is not necessary to require the additional language recommended by ETRTO and SRI.

Furthermore, we have decided to deny ETRTO's request to make mandatory the other TPMS-related topics addressed in S4.5(b). Again, because we believe that the required statement under S4.5(a) provides a clear and simple explanation about the TPMS to the consumer, we believe the optional topics listed in S4.5(b) may be beneficial, but are not necessarily critical. In addition, some of those topics may not apply to all vehicles, depending upon the type of TPMS technology installed.

3. Other Owner's Manual Issues

The Alliance recommended moving the requirements currently contained in S4.5, *Written Instructions*, from 49 CFR part 571 (*i.e.*, FMVSS No. 138) to 49 CFR part 575, *Consumer Information*, the locus of other owner's manual requirements involving specific language. According to the Alliance, other safety standards under part 571 with requirements for the owner's manual generally provide manufacturers discretion to include their own descriptions of certain required information or elements (*e.g.*, FMVSS Nos. 108, 202, 205, 208, 210).

The Alliance expressed concern that retention of the owner's manual requirement in part 571 could unnecessarily trigger the recall and remedy provisions under 49 U.S.C. 30118 and 30120. The Alliance argued that even a typographical error, no matter how minor or insignificant, would at the very least require the manufacturer to notify NHTSA that a noncompliance exists by filing a report under 49 CFR part 573, *Defect and Noncompliance Reports*, and to petition for a determination of inconsequentiality.

Furthermore, the Alliance argued that movement of the TPMS-related owner's manual requirements to part 575 would not have any impact upon vehicle manufacturers' compliance, because even with such a change, manufacturers would still be subject to the penalty provisions of part 578, *Civil and Criminal Penalties*, for violations of the part 575 regulations. In addition, Alliance stated that there is already sufficient incentive for manufacturers to communicate effectively regarding safety issues, because vehicle manufacturers have a strong incentive to satisfy customers, to protect corporate reputation, and to avoid litigation.

The Alliance argued that reassigning the TPMS-related owner's manual requirements to part 575 would alleviate any carry-forward credit concerns associated with text that does not precisely conform to that adopted in FMVSS No. 138. That is because under S7.4(a) of FMVSS No. 138 and subpart G of part 585 (TPMS Phase-in Reporting Requirements), a manufacturer must report compliance with all TPMS requirements, except for S4.4 which deals with the TPMS MIL, in order to earn carry-forward credits.

The Alliance's petition also stated that the required owner's manual language presented in the agency's TPMS Laboratory Test Procedure (TP-138-00) does not match that set forth in S4.5(a). The Alliance asked the agency to reconcile this conflicting language.

Upon consideration, we have decided to deny the Alliance request to move the requirement under S4.5(a) for the specific owner's manual statement to 49 CFR part 575. We believe that the required statement describing the TPMS and its role is a fundamental aspect of the standard, and accordingly, we believe that it should remain an integral part of FMVSS No. 138. Although it is true that errors in printing the owner's manual statement could trigger manufacturer responsibilities under the recall and remedy provisions of 49 U.S.C. 30118 and 30120, we believe that such instances would be rare and easily avoidable. Careful proofreading of pre-publication owner's manual statements should ensure that the standard's required language is faithfully executed, and in rare instances where typographical errors arise, those situations can be readily corrected through a petition for determination of inconsequential noncompliance.

As to the Alliance's point regarding the discrepancy between the required owner's manual language in S4.5(a) of the standard and the TPMS Laboratory Test Procedure (TP-138-00), we have since corrected the latter document to remedy this inadvertent error (*see* <http://nhtsa.gov/portal/site/nhtsa/menuitem.b166d5602714f9a73baf3210dba046a0/>).

F. Test Procedures

The test conditions for the TPMS may be found under S5 of the standard, and the corresponding test procedures may be found at S6 of the standard. Specific aspects of these test conditions and procedures are outlined below, along with focused issues raised in petitions for reconsideration.

However, the petition submitted by ETRTO raised the issue of the adequacy of the test procedures generally, so that

topic will be discussed and responded to as an initial matter. Specifically, ETRTO argued that the final rule's test procedures represent a step backward from the NPRM in terms of ensuring that drivers are warned promptly when a vehicle's tires are 25-percent under-inflated or reach the minimum activation pressure. ETRTO expressed concern that "comparison of an under-inflation level checked while tyres are warm with a placard inflation level relative to cold tyres may be seriously misleading." The petitioner provided data intended to demonstrate the inconsistent results that may be presented, depending upon the tire and when it is tested under the test procedures of FMVSS No. 138. ETRTO stated that the final rule's arguments related to the vehicle cool-down period (discussed at section IV.C.4.d of the final rule) are not pertinent because they are not supported by experimental evidence. Furthermore, ETRTO argued that the final rule does not take into account measurement uncertainties and capabilities of TPMSs, and that measurement quality assurance principles have not been met. ETRTO also asserted that modifications are necessary because manometers at gas station air pumps are seriously inaccurate, something which could contribute to the above problems. For these reasons, ETRTO recommended reverting to the test procedures set forth in S6 of the NPRM, because it believes that those procedures are more likely to result in closer compliance with the standard's 25-percent under-inflation detection requirement.

In response, we note that the test procedure for low tire pressure detection was modified in the final rule to eliminate the one-hour cool-down period after system calibration, because that provision required that the tires be cycled from cool to warm during the test. That would have introduced temperature and pressure uncertainties during the test procedure, and there would have been the possibility that tire pressure would rise to a level above the activation threshold for the low tire detection telltale. Elimination of the one-hour cool-down period allows the low pressure test to be conducted with minimal temperature and pressure change.

We believe that the arguments in the April 8, 2005 final rule related to the vehicle cool-down period (*see* section IV.C.6.d) are supported by the data in the ETRTO petition. That is, the tire pressure in the deflated tire remains below the TPMS telltale activation level while the vehicle is driven. With regard to the argument that the test procedure

in the final rule allows the test pressure in the under-inflated tire to be 30 percent or more below placard pressure, the compliance tests must be conducted at an under-inflation level of 25 percent or more below placard or at the MAP. We believe that the test procedures, as amended in this final rule, will result in TPMS testing with an under-inflation level of 25-30 percent below placard for the test tire(s), which we also believe is sufficiently accurate when variations in ambient temperature, tire temperature, tire geometry, and test instrumentation are considered. The example offered by ETRTO in which tire pressure errors at service stations are calculated based on a pressure gauge with 90 percent accuracy, is not representative of the level of accuracy experienced in compliance or certification testing. For these reasons, we believe that the test procedures, as amended in response to the petitions, are appropriate.

1. Test Conditions

The final rule included provisions under S5, *Test Conditions*, to specify the conditions under which the agency would conduct compliance testing under S6, *Test Procedures*. Specifically, S5 provided that during testing, the ambient temperature would be between 0° C (32° F) and 40° C (104° F) (*see* S5.1, as contained in the April 8, 2005 final rule). The road test surface will be any portion of the Southern Loop of the Treadwear Test Course defined in Appendix A and Figure 2 of 49 CFR 575.104, and the road surface will be dry during testing (*see* S5.2, as contained in the April 8, 2005 final rule).

The vehicle will be tested at any weight between its lightly loaded vehicle weight and its gross vehicle weight rating (GVWR) without exceeding any of its gross axle weight ratings (*see* S5.3.1, as contained in the April 8, 2005 final rule). The vehicle's TPMS will be calibrated and tested at speeds between 50 km/h (31.1 mph) and 100 km/h (62.2 mph) (*see* S5.3.2, as contained in the April 8, 2005 final rule). The vehicle's rims may be positioned at any wheel position, consistent with any related instructions or limitations in the vehicle owner's manual (*see* S5.3.3, as contained in the April 8, 2005 final rule). The final rule also specifies that the vehicle's tires will be shaded from direct sun when the vehicle is parked (*see* S5.3.4, as contained in the April 8, 2005 final rule) and that driving time shall not accumulate during application of the service brake (*see* S5.3.5, as contained in the April 8, 2005 final rule).

The RMA petitioned the agency to amend the test conditions in the TPMS standard to ensure that the system operates under all conditions that would represent the real-world driving environment. Although the RMA's petition did not set forth these recommended changes in detail, it did reference the same recommendations from the organization's earlier petition for rulemaking and its comments on the September 2004 NPRM for TPMS. In those earlier submissions, the RMA argued that the temperature range for testing should be expanded to include ambient temperatures below freezing (32° F) and above 104° F. The RMA also advocated testing under slippery road conditions, increasing the range for the driving speed to include speeds over 100 kmh for low tire pressure detection, and testing during braking maneuvers.

ETRTO made a similar argument in its petition, seeking changes to the standard's test condition to comport with the organization's suggestions presented at an earlier stage of the rulemaking. In its earlier submissions, ETRTO made comments similar to those provided by the RMA (discussed immediately above) on this issue, except that ETRTO also recommended testing at speeds below 31 mph. According to ETRTO, unless such modifications are made to better reflect actual driving environments, the standard will not maximize consumer safety, as required by the TREAD Act.

The petition of VW/Audi argued that the Southern Loop of the Tread Wear Test Course may not represent a reasonable or practicable means of evaluating real-world TPMS usage, as would meet the objective of establishing a standard that would both enhance motor vehicle safety and also be practicable for compliance purposes. For this reason, VW/Audi recommended that S6(d) and (f) of the standard's test procedures should be revised to permit up to 60 minutes of driving time for certification purposes. Specifically, VW/Audi recommended that S6(d), the system calibration/learning phase, should permit a cumulative total of 60 minutes of driving with a minimum of 10 minutes in at least three vehicle speed ranges (e.g., 50–70 kmh, 70–85 kmh, and 85–100 kmh (or some other sets of speed ranges with limits of ± 10 kmh)). VW/Audi also stated that the detection time in S6(f)(2) should be increased to a total cumulative time of 60 minutes, and that the drive time in S6(f)(3) should be the lesser of 60 minutes or the time at which the low tire pressure telltale illuminates.

After considering the petitioners' comments regarding test conditions, we

have decided that no further modifications to the test conditions in S5 are necessary. The agency's intention in developing the test procedure for TPMS-equipped vehicles was not to test the TPMS at every conceivable vehicle operating condition, but to instead evaluate the system at operating conditions that are typically encountered during normal driving. The RMA and ETRTO did not present any new data or arguments regarding the adequacy of the final rule's test conditions, nor did they specify any recommendations for test parameters that they believe would be more reflective of real world driving conditions.

Consistent with the approach discussed above, the agency decided to specify the Southern Loop of the Tread Wear Test Course, a public roadway, for the compliance test, rather than using a test facility. We do not agree with the argument in the VW/Audi petition that the Southern Loop of the Tread Wear Test Course is not a reasonable or practicable means of evaluating real-world TPMS usage. We believe that a public roadway is highly representative of the real world conditions that may be encountered by drivers, and we further believe that, in light of the fact that this particular course has been used for several years for testing under our Uniform Tire Quality Grading Standards (UTQGS), there is not any reason to believe that the course would not similarly be suitable for TPMS testing.

We are not adopting the suggestion of VW/Audi to specify that portions of the test be conducted in three ± 10 kmh subsets of the overall speed range specified in S5.3.2. The VW/Audi petition did not provide any data to demonstrate why these narrower speed range categories are necessary, and because vehicle operators are unlikely to observe such strictures during normal driving, we have decided to retain the final rule's speed range of 50–100 kmh (31.1–62.2 mph) without additional refinement. Furthermore, we do not believe that VW/Audi's argument related to extending the time periods for TPMS calibration and low tire pressure detection is directly related to the standard's test conditions; accordingly, this issue is being addressed elsewhere in this notice.

For these reasons, we continue to believe that the test conditions specified in the final rule will result in robust TPMSs that will function normally over a wide range of operating conditions. Accordingly, we do not believe that additional specifications related to temperature, weather, or speed would appreciably change the TPMS's

performance. Furthermore, it is unlikely that design changes yielding greater safety benefits would result because vehicle manufacturers are aware of the temperature, weather, vehicle speed, and other conditions that their vehicles are exposed to and typically design to meet or exceed those conditions.

2. Vehicle Cool-Down Period

Under S6, *Test Procedures*, the final rule states that the vehicle will be driven within five minutes after reducing the inflation pressure in the tire(s) as part of the low tire pressure detection phase (see S6(f)(1), as contained in the April 8, 2005 final rule), and, for vehicles in which the TPMS successfully detected low tire pressure, it also requires the vehicle's ignition to be turned off for five minutes, after which time the ignition locking system is reactivated to determine whether the system continues to detect the under-inflation condition (see S6(g), as contained in the April 8, 2005 final rule). Under S6(h), the next sequential step in the test procedure, the vehicle is to be kept stationary for a period of up to one hour with the engine off, after which time the vehicle's tires are re-inflated and the TPMS should recognize that the low tire pressure situation has been resolved. The vehicle may be driven in order to allow the TPMS to check the tire pressure and to extinguish the low tire pressure telltale.

In their petitions, ETRTO and SmarTire objected to the agency's decision in the April 8, 2005 final rule to eliminate the vehicle "cool down" period in S6(e) and S6(f)(1), for the following reasons. With reference to the calibration/learning phase in S6(d), SmarTire argued that a 20-minute driving interval (especially at high speeds and high ambient temperatures) may increase tire pressure by 5–6 psi over placard pressure. SmarTire expressed concern that this pressure build-up of 5–6 psi would still be present when the pressure in the tire(s) is reduced to the test pressure.

SmarTire provided data indicating that as presently worded, the FMVSS No. 138 test procedure would permit a TPMS with only a 50-percent under-inflation detection capability, rather than the required 25-percent under-inflation detection capability. SmarTire asserted that this situation could lead to irreparable structural damage to the tire, which could possibly lead to tire failure, so the petitioner recommended amending the final rule to restore the one-hour cool down period to the test procedure.

ETRTO also provided tire pressure data obtained by driving a vehicle,

deflating the warm tires, and measuring tire pressure at various time intervals after tire deflation. The ETRTO data indicated that, under most deflation conditions, the warm tires that were deflated to 25 percent below placard pressure minus 2 psi maintained a tire pressure of 30 percent or more below placard pressure.

For the reasons that follow, we have decided against reinstating the one-hour cool-down period proposed in the NPRM. However, we are also sensitive to petitioners' arguments that the pressure during testing should be kept as close as possible to the standard's 25-percent under-inflation activation threshold.

Our understanding of the relevant positions on the cool-down period is as follows. Vehicle manufacturers expressed concern that if a vehicle is permitted to cool down for one hour after the calibration phase of testing, once the vehicle is driven, the tires will warm up, and tire pressure would be expected to rise by several psi. Thus, vehicle manufacturers are concerned that the tires may warm up to a point above the TPMS low tire activation threshold (*i.e.*, less than 25 percent below placard pressure), thereby causing the low tire pressure telltale to extinguish after illumination or not illuminate at all. Accordingly, the vehicle manufacturers favor both a short cool-down period (*e.g.*, five minutes or less) and a larger temperature compensation adjustment (*e.g.*, 2 psi).

In contrast, tire manufacturers are concerned that there would be a 30-percent or greater difference in pressure between: (a) A cold tire inflated to placard pressure and then heated up by driving and (b) a warm tire that has been deflated to 25 percent below placard pressure. Under real world driving conditions, this would increase the potential for tire damage and failure. Accordingly, tire manufacturers favor a longer cool-down period (*e.g.*, one hour) and a smaller temperature compensation adjustment.

In response to public comment from vehicle manufacturers at the NPRM stage, the agency reduced the cool-down period in S6(f)(1) from the NPRM's proposed one hour to the final rule's five minutes, in order to conduct the low pressure test without significant temperature variation. We agree with the vehicle manufacturers that elimination of the one-hour cool-down period will help maintain the under-inflated tire's pressure and allow it to remain below the TPMS activation threshold during testing. Although the pressure difference between the fully-inflated tires and the under-inflated

tire(s) may be somewhat larger without the one-hour cool-down, the actual pressure of the under-inflated tire(s) would not be expected to be significantly above the standard's low tire pressure activation threshold. The SmarTire and ETRTO petitions did not provide any data to document the tire damage expected to occur as a result of the final rule's reduction in the time of the cool-down period, and they did not provide any alternative solution to the problem of tire pressure and temperature rising during vehicle operation. Accordingly, we have decided to retain the provisions in S6 related to vehicle cool-down as presented in the final rule without change.

3. 2-psi Adjustment (Temperature Correction)

Under S6(e) of the final rule, any combination of one to four tires is deflated to 14 kPa (2 psi) below the inflation pressure at which the TPMS is required to illuminate the low tire pressure warning. This provision sets the stage for the test procedures' low pressure test (*i.e.*, the system detection phase). This adjustment provides some margin in compliance testing to ensure that a warm tire does not cause a tire deflated by 25 percent below placard pressure to again rise slightly above the 25-percent TPMS warning threshold.

The issue of the 2 psi adjustment in S6(e) of the test procedures was among the most frequently raised issues in the petitions for reconsideration (*i.e.*, topic addressed by the Alliance, Michelin, the RMA, and SmarTire). The RMA stated that the final rule modified the test procedure to include a -14 kPa (-2 psi) adjustment in tire pressure during testing, rather than the -7 kPa (-1 psi) adjustment proposed in the NPRM, but it did not provide any independent testing data or other verification to support this change.

To address this point, a number of RMA member companies conducted testing, and these data, provided with the RMA petition, suggested that this change to the test procedures could permit testing of the TPMS with tires under-inflated by 32 percent or more below placard pressure, rather than the required 25 percent. Furthermore, the RMA stated that its testing showed that by controlling the deflation rate, it would be possible to eliminate any increase in tire pressure that occurs after rapid tire deflation.

The RMA offered the following recommended solution to this perceived problem, which it characterized as a minor modification of S6(e) of the standard's test procedures, but which it

believes would produce consistent and objective results. Specifically, the RMA's petition called for a pressure re-check and reset after deflation through the following modified language (bracketed text is deleted text):

Stop the vehicle and deflate any combination of one to four tires until the deflated tire(s) is (are) at [14 kPa (2 psi) below] the inflation pressure at which the tire pressure monitoring system is required to illuminate the low tire pressure warning telltale. *After two minutes, re-check the tire pressure and adjust the pressure as necessary.*

Michelin reiterated the RMA's point that a -14 kPa (-2 psi) adjustment to the TPMS activation threshold could result in a TPMS being tested at 32 percent under-inflation, rather than the required level of 25 percent, and it incorporated the reasoning set forth in the RMA submission by reference. Michelin also provided an attachment to its petition intended to demonstrate the variability of the pressure increase for warm tires after deflation depending upon tire size and deflation technique.

SmarTire also objected to the provision in the test procedures that sets the tire pressure at 14 kPa (2 psi) below the 25-percent-below-placard level, because it argued that this approach could result in a TPMS being tested at 30-percent under-inflation. SmarTire stated that if a 14 kPa (2 psi) tolerance on test pressure setting is necessary for test consistency, then the agency should modify the standard to require the TPMS to illuminate the low tire pressure warning telltale at some point above the 25-percent under-inflation threshold, such that 25-percent under-inflation remains the minimum requirement.

The Alliance did not object to the level of the pressure adjustment provided in S6(e), but it did request further changes to S6 to account for the fact that environmental factors (*e.g.*, ambient temperature, wind), road test surface temperature (*i.e.*, heat transfer from road to tire), and sun load on the tires (during driving and when stationary) can impact tire temperature and tire pressure. According to the Alliance, unless the standard carefully controls for these factors, there is a significant risk that a vehicle will be mistakenly determined to be out of compliance.

Therefore, the Alliance also recommended additional verification in order to provide an objective determination of noncompliance, which it believes may be accomplished by modifying S6(f) and (g) of the standard as follows:

(f) If the low tire pressure telltale did not illuminate, stop the vehicle. Check the inflation pressure of the tire(s) deflated in S6(e).

(i) If the pressure in the deflated tire(s) is below the inflation pressure at which the TPMS is required to illuminate the low tire pressure telltale, discontinue the test.

(ii) If the pressure in the deflated tire(s) is above the inflation pressure at which the TPMS is required to illuminate the low tire pressure telltale, repeat procedure from S6(e).

(g) If the low tire pressure telltale illuminated during the procedure in paragraph S6(f), turn the ignition locking system to the "Off" or "Lock" position. After a 5-minute period, turn the vehicle's ignition locking system to the "On" ("Run") position. The telltale must illuminate and remain illuminated as long as the ignition locking system is in the "On" ("Run") position. If the telltale does not illuminate or turns off during this procedure, check the inflation pressure of the tire(s) deflated in S6(e). If the pressure in the deflated tire(s) is below the inflation pressure at which the TPMS is required to illuminate the low tire pressure telltale, discontinue the test.

After careful consideration of the petitioners' arguments related to the 2-psi pressure adjustment, we have decided to reduce that adjustment to 1 psi. However, we have decided that it is not necessary to incorporate the additional pressure checks recommended by the Alliance and the RMA. The following explains our rationale.

In response to public comments submitted by NIRA Dynamics and VW/Audi on the NPRM, we added the 2-psi pressure adjustment to the low tire pressure detection test in S6(f). However, given that the vehicle cool-down period has been significantly reduced and that the low tire pressure test is to be conducted without significant tire temperature variation, we are concerned that a 2-psi pressure adjustment may actually represent an under-inflation level closer to 30 percent, rather than the standard's stated activation threshold of 25-percent under-inflation. Assuming that a tire's inflation pressure typically rises 2–3 psi during normal vehicle operations, we believe that this is a valid concern. We believe that amending the standard to provide a 1-psi adjustment under S6(f) would significantly reduce the amount of under-inflation deviation from the threshold level articulated in the standard.

The Alliance recommended revising the test procedure in a manner that would eliminate the standard's current five-minute cool-down period because it believes that even a small delay could allow the tires to cool slightly, thereby resulting in a pressure decrease that could once again allow the pressure to

increase above the detection threshold level, once the vehicle is driven again during the low pressure detection phase. According to the Alliance, the 2-psi adjustment helps ensure that any pressure increase as the vehicle is driven will not result in the pressure rising above the activation level. We have considered the Alliance's concerns, but we have decided that it is not necessary to eliminate the five-minute cool-down period and that it is possible to limit the pressure adjustment to 1 psi without triggering testing problems.

Test data submitted by the RMA in August 2003 demonstrated that a tire's temperature and inflation pressure do not begin to decrease immediately following the end of the road wheel test (conducted under FMVSS No. 139), but instead, the tire maintains its operational temperature and pressure for a few minutes before beginning to slowly decrease to its initial test pressure.³⁷

Data from studies of the relationship between tire pressure and time were submitted by the RMA³⁸ and Michelin³⁹ along with their petitions. These studies, which involved deflating tires at different rates and monitoring the pressure after deflation, indicated that tire pressure rose several psi above the pressure at which the deflation was ended when the deflation rate was rapid. However, for slower deflation rates, the pressure tended to remain very close to the value attained immediately after the deflation procedure was completed. Therefore, based upon the available information, we do not believe that it is necessary to eliminate the five-minute cool-down period or that it is critical to maintain a 2-psi pressure adjustment in the test procedure. We also do not believe that additional modifications are necessary to compensate for the "environmental effects" mentioned by the Alliance; the Alliance did not provide data demonstrating the extent of these alleged effects, and we believe that the standard accounts for such effects as promulgated.

Instead, we believe that the Alliance's concerns can be accommodated by careful, deliberate administration of the test, as reflected in our more detailed Laboratory Test Procedure for TPMS (TP-138-00). For example, in the Laboratory Test Procedure, we specify use of a pressure gauge with an accuracy of ± 0.5 percent, which we believe would ensure that the tire pressure is

close to the intended value when measured. Use of an accurate gauge is important so as to reduce the number of measurements needed to obtain an accurate reading. That is because each time a pressure measurement is taken from an inflated tire, there is a slight loss of inflation pressure, so fewer checks should result in fewer adjustments and less pressure loss. We do not believe that S6 requires amendment to incorporate additional pressure checks during testing to ensure that the pressure is at the correct value, because we believe that the existing procedures are adequate. We are also denying the RMA's recommendation to eliminate the pressure adjustment entirely, because we believe that such action would unnecessarily complicate our testing.

Furthermore, we believe that deflating the tire to 1 psi below the 25-percent under-inflation threshold, as opposed to 2 psi, would not change the stringency of the performance requirements specified in S4.2, but it would ensure that the pressure in the under-inflated tire(s) remains closely tied to the low tire pressure activation threshold. This adjustment was included to facilitate the vehicle test, not to relieve manufacturers' responsibility to provide a TPMS that can detect when a tire is 25-percent below placard pressure. Given the difficulty involved with allowing an extended tire cool-down period during the low pressure detection phase, we believe that amending the standard to provide a 1-psi pressure adjustment is a reasonable approach that should prevent actual under-inflation values that are significantly below the standard's 25-percent activation value.

4. Calibration Time

Under the April 8, 2005 final rule, the standard's test procedures provide a cumulative time period of up to 20 minutes for TPMS calibration. During this system "learning phase," the vehicle is driven for up to 15 minutes of cumulative time (not necessarily continuously) along any portion of the test course. Direction of travel on the test course is then reversed, and the vehicle is driven for an additional period of time, for a total cumulative time of 20 minutes. (See S6(d), as contained in the April 8, 2005 final rule.)

As noted above, the petitions of NIRA Dynamics and VW/Audi asked that the standard be amended to provide a one-hour time period for TPMS calibration. The petitioners argued that effective calibration of their TPMSs requires up to one hour of time over a range of

³⁷ Docket No. NHTSA-2003-15400-9.

³⁸ Docket No. NHTSA-2005-20586-21.

³⁹ Docket No. NHTSA-2005-20586-29.

speeds. In addition, the petitioners asserted that in light of the mechanism through which multiple-tire under-inflation occurs (*i.e.*, through slow diffusion), calibration within 20 minutes is unnecessary.

After careful consideration, we have decided to deny the petitioners' requests to increase calibration time from the current 20 minutes to one hour. Even though the agency is committed to developing a standard that is as technology-neutral as possible, we believe that a 60-minute time period for TPMS calibration is too long. Were we to adopt a calibration time period consistent with the petitioners' recommendations, the average consumer might require several trips for the TPMS to be properly calibrated. While calibrating, the TPMS is unavailable to provide its important warning about low tire pressure. Furthermore, we note that TPMS calibration and under-inflation detection are sequential events, so those time periods must be added to properly reflect the amount of time that may elapse before the TPMS may provide a warning to the driver. This fact argues against extending calibration time in the manner the petitioners have suggested, particularly because situations exist where the low pressure condition may arise for reasons other than slow diffusion.

Since there is no indication as to when the TPMS calibration process is complete, most consumers are likely to assume that calibration is complete shortly after the system reset button is activated, for systems that use a reset feature. We believe that such expectation brings about a false sense of security to consumers who may believe that once the reset button is activated, the system is again ready to detect low inflation pressure in any of the vehicle's tires. (Because the issue of calibration time is closely linked to the issue of low tire pressure warning activation, please see section IV.A of this notice for additional explanation regarding the need for the TPMS to provide its warnings promptly.)

Depending upon how often there is a need to reset the system, there is the potential for the TPMS to be unavailable to provide a low tire pressure warning with some degree of frequency, which would add to our concern about extending the calibration time in S6(d). Furthermore, we note that Sumitomo Rubber Industries, a manufacturer of indirect TPMSs, currently produces a system that can calibrate within 20 minutes, thereby demonstrating the practicability of a 20-minute calibration

requirement.⁴⁰ We expect that with additional time and development, other systems could satisfy this requirement as well. For these reasons, we continue to believe that requiring TPMS calibration within 20 minutes is appropriate.

G. TPMS Reprogrammability

Under the final rule, vehicle manufacturers are permitted, but not required, to provide a TPMS reprogrammability feature. However, the final rule made clear that the agency will conduct compliance testing with the tires installed on the vehicle at the time of initial sale and will follow any manufacturer instructions in the owner's manual related to resetting the TPMS. (See 70 FR 18136, 18146 (April 8, 2005))

According to SEMA, replacement tires for a vehicle may require higher inflation pressure than the vehicle's original equipment tires, and unless the TPMS is reprogrammed to reflect this new placard pressure, those replacement tires may become more than 25 percent under-inflated by the time the TPMS low tire pressure warning telltale illuminates. SEMA argued that this situation would both defeat the purpose of the rule and also give drivers a false sense of security, although SEMA acknowledged that it does not have specific information to demonstrate how significant this problem currently is or will be in the future. SEMA recommended that the standard be amended to require TPMS reprogrammability.

We have decided to deny SEMA's request that we amend FMVSS No. 138 to require TPMS reprogrammability, because there is no evidence to demonstrate an actual problem in this area. We believe that vehicle manufacturers installing TPMSs that may require reprogramming in certain situations are well aware of this issue and will provide this feature, as necessary. Thus, in the final rule, we expressly stated that TPMSs are permitted to be reprogrammable. Once again, although we are uncertain as to the exact details of system reprogrammability, we assume that it will be fairly easy for the service industry to reprogram TPMSs to accommodate different tires and rims.

⁴⁰ In a June 28, 2005 letter submitted to the docket, SRI suggested that additional calibration time would be beneficial in terms of system accuracy, although it is not absolutely necessary. (See Docket No. NHTSA-2005-20586-37).

H. Sharing of TPMS Servicing Information

The April 8, 2005 final rule stated that the agency does not believe it necessary to mandate vehicle manufacturers to report repair and servicing information to the aftermarket sales industry and the service industry. As stated in the preamble to the final rule, NHTSA has not received any consumer complaints regarding the serviceability of existing TPMSs, and the agency expects that the marketplace will make sufficient information available to permit convenient sales, maintenance, and repair of such systems. (See 70 FR 18136, 18175 (April 8, 2005))

In its petition, SEMA reiterated the argument made in its comments on the NPRM that the agency should require vehicle manufacturers to share sufficient information to allow third-party servicing of TPMSs. SEMA stated that it has heard complaints that the service and repair industry and the aftermarket sales industry have been denied access to TPMS service information from both sensor manufacturers as well as vehicle manufacturers. However, SEMA did not provide any information to substantiate these anecdotal complaints, nor did it provide any facts to ascertain how large a problem there may be regarding access to service information. To resolve these concerns, SEMA recommended that the standard be amended to include a requirement that any TPMS servicing information must be made available to the vehicle owner, to the extent that such information is available to other parties.

SEMA further argued that unless this recommendation and the other recommendations contained in its petition are followed, the rule may have a significant negative impact upon its small business members, because they may be unable to install their products if the TPMS MIL cannot be extinguished.

We have decided to deny SEMA's request that we compel vehicle manufacturers to share TPMS servicing information with the service and repair industry. SEMA has not provided any evidence to demonstrate that vehicle manufacturers would not make necessary repair and servicing information available to the aftermarket sales industry and to the service industry, and its claims of a significant negative impact on its members are also speculative.

As noted in the final rule, we have not received any consumer complaints regarding the serviceability of existing TPMSs. Vehicles currently include

many complex systems, and although dealer involvement may be necessitated in some cases, the marketplace has generally made available sufficient information to permit convenient maintenance and repair of such systems. We do not believe that TPMS technologies will prove any different in this regard.

Furthermore, we are not requiring vehicle manufacturers to share TPMS servicing information with the vehicle owner. We believe that such a requirement would be unnecessary for the reasons discussed above and also because consumers are likely to find such highly technical information to be confusing and of little direct usefulness.

I. Phase-In Calculations

Under S7, *Phase-in Schedule*, the final rule sets forth the requirements for vehicle manufacturer implementation of the TPMS standard. Specifically, under S7.1, for vehicles manufactured on or after October 5, 2005 and before September 1, 2006, the number of vehicles complying with the standard (other than the TPMS malfunction provisions of S4.4) must not be less than 20 percent of either: (a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2002 and before October 5, 2005, or (b) the manufacturer's production on or after October 5, 2005 and before September 1, 2006.

Under S7.2, vehicles manufactured on or after September 1, 2006 and before September 1, 2007 are subject to a 70 percent phase-in of either: (a) The manufacturer's average annual production of vehicles manufactured on or after September 1, 2003 and before September 1, 2006, or (b) the manufacturer's production on or after September 1, 2006 and before September 1, 2007.

As required by S7.3, all vehicles manufactured on or after September 1, 2007 must comply with all requirements of the standard, including the TPMS malfunction requirements of S4.4. However, S7.7 provides an exception for vehicles manufactured by final-stage manufacturers and alterers, entities that are not subject to the phase-in and for which the final rule provides an additional year for compliance (*i.e.*, until September 1, 2008).

The final rule provides carry-forward credits for vehicles that comply with the requirements of the standard and which are in excess of the compliance requirement for the phase-in reporting period in question (*see* S7.4(a), as contained in the April 8, 2005 final rule). In addition, the final rule provides

carry-backward credits, through which a vehicle manufacturer is permitted to reduce its compliance responsibility during the first period of the phase-in, provided that it increases compliance by a corresponding number of vehicles during the second period of the phase-in (*see* S7.4(c), as contained in the April 8, 2005 final rule).

The AIAM argued that the final rule is inconsistent regarding its articulation of the compliance requirement for the initial period of the phase-in (*i.e.*, from October 5, 2005 to September 1, 2006). Its petition stated that the final rule's preamble calls for a 20 percent of a vehicle manufacturer's production to be equipped with TPMSs that are compliant with FMVSS No. 138 during that roughly eleven-month period. However, in the regulatory text, one of the options for calculating the number of vehicles that must comply during that period is based upon a full year of production (*i.e.*, S7.1(a)). According to the AIAM, that provision of the final rule effectively requires a compliance rate of approximately 22 percent during the initial phase-in period (rather than 20 percent).

To remedy this situation, the AIAM recommended revising S7.1(a) to read, "The manufacturer's total production of vehicles manufactured on or after September 1, 2002, and before October 5, 2005, divided by 3.414." Furthermore, the AIAM urged the agency to adopt a separate reporting requirement under 49 CFR 585.66(b) for the first phase-in period, which would require vehicle manufacturers to submit the following information: (1) The number of complying vehicles for the period from October 5, 2005, to August 31, 2006, and (2) total light vehicle production for that period, or total light vehicle production for the period from September 1, 2002, to October 5, 2005, depending upon the compliance option that is selected.

After carefully considering AIAM's argument, we have decided to retain the phase-in requirement in S7 for the initial period of the phase-in without change. Under S7.1, a vehicle manufacturer has two options for calculating the number of FMVSS No. 138-compliant vehicles that must be produced during the initial period of the phase-in from October 5, 2005 to September 1, 2006. Consistent with the discussion in the preamble of the final rule, one of those options is 20 percent of the manufacturer's actual production during that period. Alternatively, the manufacturer may choose 20 percent of a three-year average as the basis for calculating the required number of complying vehicles. The manufacturer

is free to choose whichever of these two options it considers to be the most advantageous.

We do not believe that the difference between the shortened initial production period and the slightly lengthened three-year average will have a significant effect on the number of vehicles that will be required to comply with the standard in MY 2006. Given our understanding of vehicle manufacturers' production plans as reflected in their responses to the agency's September 9, 2003 Special Orders, we tentatively decided in the NPRM that 50 percent compliance during the first year of the phase-in would be reasonable; thus, the final rule's phase-in requirement of 20 percent for the initial period should be achievable under either method of calculation. Furthermore, carry-backward credits are available under S7.4(c) of the standard to further ease implementation in the event the difference between the two methods of calculation under S7.1 somehow proves problematic.

However, we are granting the AIAM's request that we modify 49 CFR 585.66, *Reporting Requirements*, to differentiate the reports to be submitted to the agency for each of the two phase-in periods. As currently drafted, section 585.66(b)(1), *Basis for Statement of Compliance*, and section 585.66(b)(2), *Production*, require manufacturers to report values for the full production year,⁴¹ without mention of the period corresponding to the first period of the phase-in (*i.e.*, from October 5, 2005 to September 1, 2006), which is the relevant total production value for calculation under S7.1(b) of FMVSS No. 138. Because the reporting of this information directly relates to determining compliance with the requirements of FMVSS No. 138, we have decided to revise 49 CFR 585.66(b)(1) and (2) to clearly differentiate between the two phase-in periods.

V. Benefits and Costs

Section VI of the April 8, 2005 final rule summarized the costs associated with the TPMS standard, as more fully described in the Final Regulatory Impact Analysis (FRIA)⁴² accompanying the final rule. The FRIA addresses the full range of anticipated costs related to TPMSs, including the cost of different TPMS technologies,

⁴¹ Under 49 CFR 585.64, the term "production year" is defined as "the 12-month period between September 1 of one year and August 31 of the following year, inclusive."

⁴² Docket No. NHTSA-2005-20586-2.

overall vehicle costs, maintenance costs, testing costs, and opportunity costs.

In summary, the FRIA estimated that the average incremental cost for all vehicles to meet the standard's requirements would range from \$48.44–\$69.89 per vehicle, depending upon the specific technology chosen for compliance. Since approximately 17 million vehicles are produced for sale in the U.S. each year, the total annual vehicle cost is expected to range from approximately \$823–\$1,188 million per year. The agency estimated that the net cost per vehicle would be \$26.63–\$100.25 (assuming a one-percent TPMS malfunction rate for replacement tires) and that the total annual net cost would be approximately \$453–\$1,704 million.

The agency has determined that the technical amendments resulting from this final rule responding to petitions for reconsideration will not appreciably change the costs and benefits reported in the FRIA. Accordingly, the agency has decided that the estimates in that document remain valid and that additional analysis is not required.

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.⁴³ These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.⁴⁴ When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.⁴⁵ 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.⁴⁶ The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.⁴⁷

As noted previously, section 13 of the TREAD Act mandated a regulation to require a tire pressure monitoring system in new vehicles. In satisfaction of this congressional directive, NHTSA

established FMVSS No. 138, *Tire Pressure Monitoring Systems*, in a final rule published in the **Federal Register** on April 8, 2005. The agency received 17 petitions for reconsideration of the final rule, two of which were subsequently withdrawn. Most of these petitions raised issues involving technical modifications and correction. In this final rule responding to petitions for reconsideration, the agency carefully considered the statutory requirements of both the TREAD Act and 49 U.S.C. Chapter 301.

First, this final rule reflects the agency's careful consideration and analysis of all issues raised in the petitions for reconsideration. In responding to the issues raised in these petitions, the agency considered all relevant motor vehicle safety information. In preparing this document, the agency carefully evaluated available research, testing results, and other information related to various TPMS technologies. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Second, to ensure that the TPMS requirements remain practicable, the agency evaluated the potential impacts of the petitions' requested actions in light of the cost, availability, and suitability of various TPMSs, consistent with our safety objectives and the requirements of the TREAD Act. As noted above, most of the changes resulting from this final rule involve relatively minor modifications to the April 8, 2005 final rule for TPMS. In sum, we believe that this final rule responding to petitions for reconsideration is practicable and will maintain the benefits of the April 8, 2005 final rule, including prevention of deaths and injuries associated with significantly under-inflated tires, increased tread life, fuel economy savings, and savings associated with avoidance of property damage and travel delays (*i.e.*, from crashes prevented by the TPMS).

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, this final rule makes minor modifications to the performance requirements for operation of the TPMS, both in terms of detecting and providing warnings related to low tire pressure and system malfunction.

The final rule also discusses test requirements for TPMS calibration, low tire pressure detection, and TPMS malfunction. This test involves driving

the vehicle under a defined set of test conditions (*e.g.*, ambient temperature, road test surface, test weight, vehicle speed, rim position, brake pedal application) on a designated road course in San Angelo, Texas. The test course has been used for several years by NHTSA and the tire industry for uniform tire quality grading testing. The standard's test procedures carefully delineate how testing will be conducted. The agency continues to believe that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the requirements of the TPMS standard.

Fourth, we believe that this final rule responding to petitions for reconsideration will meet the need for motor vehicle safety by making certain modifications that will enhance the ability of the TPMS standard to provide a warning to the driver when one or more tires become significantly under-inflated, thereby permitting the driver to take corrective action in a timely fashion and potentially averting crash-related injuries.

Finally, we believe that this final rule responding to petitions for reconsideration is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard resulting from this final rule will further the agency's efforts to address Congress' concern that significantly under-inflated tires could lead to tire failures resulting in fatalities and serious injuries. Under the TREAD Act, Congress mandated installation of a system in new vehicles to alert the driver when a tire is significantly under-inflated, and NHTSA has determined that TPMSs meeting the requirements of this final rule offer an effective countermeasure in these situations. Accordingly, we believe that this final rule is appropriate for covered vehicles that are or would become subject to these provisions of FMVSS No. 138 because it furthers the agency's objective of preventing deaths and serious injuries associated with significantly under-inflated tires.

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:

⁴³ 49 U.S.C. 30111(a).

⁴⁴ 49 U.S.C. 30102(a)(9).

⁴⁵ 49 U.S.C. 30111(b).

⁴⁶ *Id.*

⁴⁷ 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

(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.

Although the April 8, 2005 final rule was determined to be economically significant, this final rule responding to petitions for reconsideration involves only relatively minor technical amendments to the FMVSS No. 138. Accordingly, it was determined that this final rule is not significant under either Executive Order 12866 or the Department of Transportation's Regulatory Policies and Procedures. The agency has estimated that the incremental costs associated with the minor modifications to the standard resulting from this final rule will not appreciably change the costs of compliance with FMVSS No. 138. Accordingly, the figures presented in the Final Regulatory Impact Analysis, docketed along with the April 8, 2005 final rule, remain apposite without modification.

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 that the present final rule responding to petitions for reconsideration only makes technical modifications and corrections to the safety standard for TPMS. As discussed in detail in the April 8, 2005 final rule establishing FMVSS No. 138, we do not anticipate that the TPMS standard will have a significant economic impact on a substantial number of small entities, and nothing in this final rule would change either that assessment or its underlying reasoning.

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.

Although statutorily mandated, this final rule responding to petitions for reconsideration of the TPMS standard was analyzed in accordance with the principles and criteria set forth in Executive Order 13132, and the agency determined that the rule would 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 responding to petitions for reconsideration is not an economically significant regulatory action under Executive Order 12866, and furthermore, the problems associated with under-inflated tires equally impact all persons riding in a vehicle, regardless of age. Consequently, this final rule does not involve decisions based upon health and safety risks that disproportionately affect

children, as would necessitate further analysis under Executive Order 13045.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 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. As part of the April 8, 2005 final rule, each of the estimated 21 affected vehicle manufacturers is required to provide one phase-in report for each of two years, beginning in the fall of 2006.

Pursuant to the June 5, 2002 TPMS final rule, the OMB has approved the collection of information "Phase-In Production Reporting Requirements for Tire Pressure Monitoring Systems," assigning it Control No. 2127-0631 (expires 6/30/06). NHTSA has been given OMB clearance to collect a total of 42 hours a year (2 hours per respondent) for the TPMS phase-in reporting. At an appropriate point, NHTSA may ask OMB for an extension of this clearance for an additional period of time.

However, the present final rule responding to petitions for reconsideration does not contain any additional information collection requirements beyond those contained in the April 8, 2005 final rule.

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.

There are no voluntary consensus standards related to TPMS available at this time. However, NHTSA will consider any such standards as they become available.

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.

As discussed in that notice, the April 8, 2005 final rule establishing FMVSS No. 138 is not expected to result in the expenditure by State, local, or tribal governments, in the aggregate, of more than \$112 million annually, but it is expected to result in an expenditure of that magnitude by vehicle manufacturers and/or their suppliers. In that final rule, NHTSA adopted a performance requirement for a system with a four-tire, 25-percent under-inflation detection capability; we believe that this approach is consistent with safety and the mandate in the TREAD Act, and it should provide a number of technological choices, thereby offering broad flexibility to minimize costs of compliance with the standard.

In contrast, the present final rule responding to petitions for reconsideration only makes technical modifications and corrections to the standard. Therefore, we do not believe that this final rule will appreciably change the costs of compliance with FMVSS No. 138. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

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. Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. 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 and 585

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 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 571.138 is amended by revising paragraphs S4.3.1(b), S4.4(b)(2) and (3), S4.4(c)(2), S4.5(a), S6(e), and S6(k) to read as follows:

§ 571.138 Standard No. 138; Tire pressure monitoring systems.

* * * * *

S4.3 *Low tire pressure warning telltale.*

S4.3.1 * * *

* * * * *

(b) Is identified by one of the symbols shown for the "Low Tire Pressure" Telltale in Table 1 of Standard No. 101 (49 CFR 571.101); and

* * * * *

S4.4 *TPMS malfunction.*

* * * * *

(b) *Dedicated TPMS malfunction telltale.* * * *

* * * * *

(2) Is identified by the word "TPMS" as described under the "Tire Pressure

Monitoring System Malfunction”
Telltale in Table 1 of Standard No. 101
(49 CFR 571.101);

(3) Continues to illuminate the TPMS
malfunction telltale under the
conditions specified in S4.4(a) for as
long as the malfunction exists,
whenever the ignition locking system is
in the “On” (“Run”) position; and

* * * * *

(c) *Combination low tire pressure/
TPMS malfunction telltale* * * *

* * * * *

(2) When the ignition locking system
is activated to the “On” (“Run”)
position, flashes for a period of at least
60 seconds but no longer than 90
seconds upon detection of any
condition(s) specified in S4.4(a). After
this period of prescribed flashing, the
telltale must remain continuously
illuminated as long as a malfunction
exists and the ignition locking system is
in the “On” (“Run”) position. This
flashing and illumination sequence
must be repeated each time the ignition
locking system is placed in the “On”
 (“Run”) position until the situation(s)
causing the malfunction(s) has (have)
been corrected.

S4.5 *Written instructions.*

(a) Beginning on September 1, 2006,
the owner’s manual in each vehicle
certified as complying with S4 must
provide an image of the Low Tire
Pressure Telltale symbol (and an image
of the TPMS Malfunction Telltale
warning (“TPMS”), if a dedicated
telltale is utilized for this function) with
the following statement in English:

* * *

* * * * *

S6 *Test procedures.*

* * * * *

(e) Stop the vehicle and deflate any
combination of one to four tires until
the deflated tire(s) is (are) at 7 kPa (1
psi) below the inflation pressure at
which the tire pressure monitoring
system is required to illuminate the low
tire pressure warning telltale.

* * * * *

(k) Simulate one or more TPMS
malfunction(s) by disconnecting the
power source to any TPMS component,
disconnecting any electrical connection
between TPMS components, or
installing a tire or wheel on the vehicle
that is incompatible with the TPMS.
When simulating a TPMS malfunction,
the electrical connections for the telltale
lamps are not to be disconnected.

* * * * *

**PART 585—PHASE-IN REPORTING
REQUIREMENTS**

■ 3. The authority citation for Part 585
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.

■ 4. Part 585 is amended by revising
585.66(b)(1) and (2) of Subpart G as
follows:

**Subpart G—Tire Pressure Monitoring
System Phase-in Reporting
Requirements**

* * * * *

§ 585.66 Reporting requirements.

* * * * *

(b) *Report content.* (1) *Basis for
statement of compliance.* Each
manufacturer must provide the number
of passenger cars, multipurpose
passenger vehicles, trucks, and buses
with a gross vehicle weight rating of
4,536 kilograms (10,000 pounds) or less,
except those vehicles with dual wheels
on an axle, manufactured for sale in the
United States for each reporting period
as follows:

(i) *Period from October 5, 2005 to
August 31, 2006.* The number shall be
either the manufacturer’s average
annual production of vehicles
manufactured on or after September 1,
2002, and before October 5, 2005, or, at
the manufacturer’s option, it shall be the
manufacturer’s production on or after
October 5, 2005 and before September 1,
2006. A new manufacturer that has not
previously manufactured these vehicles
for sale in the United States must report
the number of such vehicles
manufactured during the production
period on or after October 5, 2005 and
before September 1, 2006.

(ii) *Period from September 1, 2006 to
August 31, 2007.* The number shall be
either the manufacturer’s average
annual production of vehicles
manufactured on or after September 1,
2003, and before September 1, 2006, or,
at the manufacturer’s option, it shall be
the manufacturer’s production on or
after September 1, 2006 and before
September 1, 2007. A new manufacturer
that has not previously manufactured
these vehicles for sale in the United
States must report the number of such
vehicles manufactured during the
production period on or after September
1, 2006 and before September 1, 2007.

(2) *Production.* Each manufacturer
must report for the production period
for which the report is filed: the total
number of passenger cars, multipurpose
passenger vehicles, trucks, and buses
with a gross vehicle weight rating of

4,536 kilograms (10,000 pounds) or less
that meet Standard No. 138 (49 CFR
571.138).

* * * * *

Issued: August 31, 2005.

Jeffrey W. Runge,
Administrator.

[FR Doc. 05–17661 Filed 9–1–05; 10:32 am]

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DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D.
082305C]

**Fisheries of the Exclusive Economic
Zone Off Alaska; Atka Mackerel in the
Bering Sea and Aleutian Islands
Management Area**

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

ACTION: Temporary rule; closures and
openings.

SUMMARY: NMFS is prohibiting directed
fishing for Atka mackerel with gears
other than jig in the Eastern Aleutian
District and the Bering Sea subarea of
the Bering Sea and Aleutian Islands
management area (BSAI). This action is
necessary to prevent exceeding the 2005
total allowable catch (TAC) of Atka
mackerel in these areas. NMFS is also
announcing the opening and closure
dates of the first and second directed
fisheries within the harvest limit area
(HLA) in Statistical Areas 542 and 543.
These actions are necessary to prevent
exceeding the HLA limits established
for the Central (area 542) and Western
(area 543) Aleutian Districts pursuant to
the 2005 Atka mackerel TAC.

DATES: The effective dates are provided
in Table 1 under the **SUPPLEMENTARY
INFORMATION** section of this temporary
action.

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

SUPPLEMENTARY INFORMATION: NMFS
manages the groundfish fishery in the
BSAI exclusive economic zone
according to the Fishery Management
Plan for Groundfish of the Bering Sea
and Aleutian Islands Management Area
(FMP) prepared by the North Pacific
Fishery Management Council under
authority of the Magnuson-Stevens
Fishery Conservation and Management
Act. Regulations governing fishing by

U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 TAC of Atka mackerel specified for other gear in the Eastern Aleutian District and the Bering Sea subarea was established as 6,868 metric tons (mt) by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). See § 679.20(a)(8)(ii) and (c)(3)(iii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that 350 mt of the 2005 Atka mackerel TAC for other gear in the

Eastern Aleutian District and the Bering Sea subarea will be necessary as incidental catch to support other anticipated groundfish fisheries. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,518 mt. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel TAC by vessels using other gear in the Eastern Aleutian District and the Bering Sea subarea.

In accordance with § 679.20(a)(8)(iii)(C), the Regional

Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543, 48 hours after the closure of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries as 48 hours after the last closure of the first HLA fisheries in either 542 or 543. Consequently, NMFS is opening and closing directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under Table 1 of this notice.

TABLE 1. EFFECTIVE DATES AND TIMES

| Action | Area | Effective Dates* | |
|---|--|------------------------------|------------------------------|
| | | From | To |
| Closing Atka Mackerel with gears other than jig | Eastern Aleutian District and the Bering Sea subarea | 1200 hrs, September 2, 2005 | 2400 hrs, December 31, 2005 |
| Opening the first directed fishery in the HLA | 542 | 1200 hrs, September 4, 2005 | 1200 hrs, September 12, 2005 |
| | 543 | 1200 hrs, September 4, 2005 | 1200 hrs, September 11, 2005 |
| Opening the second directed fishery in the HLA | 542 | 1200 hrs, September 14, 2005 | 1200 hrs, September 22, 2005 |
| | 543 | 1200 hrs, September 14, 2005 | 1200 hrs, September 21, 2005 |

*Alaska local time

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel owner as to which fishery each vessel has been assigned by NMFS. (70 FR 49197, August 23, 2005).

In accordance with § 679.20(a)(8)(ii)(C)(1), the HLA limits of the 2005 TACs in areas 542 and 543 are 9,851 mt and 5,550 mt, respectively. Based on those limits and the proportion of the number of vessels in each fishery compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543, the harvest limit for each HLA directed fishery in areas 542 and 543 are as follows: for the first directed fishery in area 542, 4,926 mt; for the first directed fishery in area 543, 2,775 mt; for the second directed fishery in area 542, 4,925 mt; and for the second directed fishery in area 543, 2,775 mt. In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has

established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the dates and times listed in Table 1 of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Atka mackerel fishery in

the Eastern Aleutian District and the Bering Sea subarea and the opening and closures of the fisheries for the HLA limits established for the area 542 and area 543 pursuant to the 2005 Atka mackerel TAC. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 15, 2005. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: August 31, 2005.

Emily Menashes,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-17712 Filed 9-1-05; 2:08 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 70, No. 172

Wednesday, September 7, 2005

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560-AH37

Transfer of Sugar Program Marketing Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Commodity Credit Corporation (CCC) proposes several changes to the sugar program regulations. First, CCC proposes to amend the regulations for transferring sugar marketing allocation when a mill closes and growers request to move their allocation.

Second, CCC proposes imposing a regulatory deadline for the program's information reporting requirements. The required monthly information would be due on the 20th of each month.

Third, CCC proposes to amend the requirements for the maintenance and inspection of records to require each cane processor, cane refiner and beet processor to provide an annual report by a Certified Public Accountant (CPA) that verifies the company's data submitted to CCC.

DATES: Comments on this rule must be submitted by November 7, 2005 to be assured consideration.

ADDRESSES: The Farm Service Agency (FSA) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

E-mail: Send comments to sugar@wdc.usda.gov.

Mail: Submit comments to: Director, Dairy and Sweeteners Analysis Group (DSAG), FSA, United States Department of Agriculture (USDA), STOP 0516, 1400 Independence Avenue, SW., Washington, DC 20250-0516.

Fax: Submit comments by facsimile transmission to (202) 690-1480.

Hand Delivery or Courier: Deliver comments to the above address.

Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected in the Office of the Director, DSAG, FSA, USDA, Room 3752-S South Building, Washington, DC, between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. A copy of this proposed rule is available on the DSAG Web site at <http://www.fsa.usda.gov/ao/epas/dsa.htm>.

FOR FURTHER INFORMATION CONTACT:

Barbara Fecso at (202) 720-4146, or via e-mail at barbara.fecso@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720-2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

Annually, CCC establishes sugar marketing allotments at a level estimated to prevent sugar loan collateral forfeitures to CCC. CCC establishes the overall allotment quantity, beet sugar and cane sugar allotments, State cane sugar allotments, and marketing allocations for processors marketing sugar domestically processed from sugar beets and domestically-produced sugarcane. If a processing mill closes, growers who delivered sugar beets or sugarcane to that mill may request a transfer of a portion of the closed mill's marketing allocation to another mill that reflects their production history at the closed mill.

CCC proposes to amend the regulations at 7 CFR 1435.308 to provide for an orderly and transparent method of distributing allocation to successor mills after growers have petitioned the Executive Vice President, CCC, to transfer allocation when their mill closes. CCC is proposing to use a formula to distribute the closed mill's allocation that will calculate grower shares based on the grower's contribution to the mill's allocation. Since the formula that determines a mill's allocation is different in the beet sector and among the cane states, the formula CCC will use to transfer allocation of closed mills will reflect these differences.

Since the enactment of the Farm Security and Rural Investment Act of 2002 (2002 Act), (Pub. L. 107-171), the

only processing facilities to have closed have been cane processing facilities in Louisiana. The procedure used then to transfer allocations, while not explicit in the sugar program regulations, reflected the two main components of the cane marketing allocation formula, (1) past production history, which is a fixed value, and (2) current year production, known as the "ability to market," a value that changed from year to year. CCC published an amendment to the regulations on September 13, 2004 (69 FR 35061), which fixed the "ability to market" factor in the allocation formula for each mainland cane State and cane processor until the program expires in 2008, under the 2002 Act. The other components of the mainland cane marketing allocation formulas were already fixed on the basis of historical production.

When two Louisiana mills announced they would not reopen for the 2005 crop, issues arose such as whether to allow growers with production history at the closed mill to petition if they had not delivered cane to the mill in the preceding year. There was also debate over which years to consider in the transfer formula, given that the "ability to market" change to the regulation had added more crop years in the allocation formula. In the end, CCC and successor mills were able to negotiate transfer shares that satisfied all parties. CCC considered allowing successor mills the opportunity to negotiate a distribution of allocation from the closed mill in the proposed rule. However, no mill can be expected to take less than it would under a formula, so CCC did not propose that option under this proposed rule. While the closure of cane mills precipitated this proposed rule, it applies to all beet and cane processors.

The second change CCC proposes is to include a due date in the information reporting provisions in 7 CFR 1435.200. This section requires every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses to report to CCC, on a monthly basis, information necessary to administer the sugar programs. CCC established an informal reporting due date of the 20th of each month in 1991, which would be incorporated in the regulations. The chronic lateness of some reporters in recent times has delayed processing and analysis of all data, which is detrimental to the sound

administration of the Sugar Program. The civil penalties provisions in section 156h(4) of the Federal Agriculture Improvement and Reform Act of 1996, as amended (7 U.S.C. 7272(h)(4)) and 7 CFR 1435.201 allow CCC to assess a civil penalty of no more than \$10,000 to reporters who willfully fail or refuse to furnish the information, or who willfully furnish false data. CCC will consider a reporter to have willfully failed to provide the information and subject to penalty, if CCC does not receive the data by the 20th of the month.

The final proposal would require each reporting entity to have an independent third party verify each company's data submitted to CCC. CCC will require an Agreed-upon Procedures engagement, conducted by an independent Certified Public Accountant (CPA), to analyze the company data annually. The provisions of 7 CFR 1435.3, *Maintenance and inspection of records* give CCC, as well as any other U.S. Government agency, the right of access to the premises of any sugar beet processor, sugarcane processor, cane sugar refiner, importer of sugars, syrups, and molasses, or of any other person having custody of records that the examining agency deems necessary to verify compliance with this part's requirements. Since this information is necessary to determine whether a processor is in compliance with sugar marketing allotment program requirements, CCC proposes to require that an independent CPA conduct a yearly agreed-upon procedures engagement of each reporter to validate their materials balance. CCC will provide the procedures to be followed by each independent CPA.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The requirements of the Regulatory Flexibility Act (5 U.S.C. 601–602) do not apply to this rule because CCC is not required to publish a notice of proposed rulemaking for the subject of this rule. Nonetheless, CCC has determined that this rule will not have a significant economic impact on a substantial number of small entities and a Regulatory Flexibility Analysis was not performed.

Environmental Assessment

The environmental impacts of this rule have been considered under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the

regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and regulations of the Farm Service Agency (FSA) of the Department of Agriculture (USDA) for compliance with NEPA, 7 CFR part 799. An environmental evaluation was completed and the proposed action has been determined not to have the potential to significantly impact the quality of the human environment and no environmental assessment or environmental impact statement is necessary. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before seeking judicial review.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

Under 7 U.S.C 7991(c)(2)(A) these regulations may be promulgated and the program administered without regard to chapter 5 of title 44 of the United States Code (the Paperwork Reduction Act).

Accordingly, these regulations and the forms and other information collection activities needed to administer the provisions authorized by these regulations are not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Government Paperwork Elimination Act

CCC is committed to compliance with the Government Paperwork Elimination Act (GPEA) and the Freedom to E-File Act, which require Government agencies in general, and the FSA in particular, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. Because of the nature of the forms and other information collection activities required for this program, they are not fully implemented in a way that would allow the public to conduct business with CCC electronically. Accordingly, at this time, all forms and information required to be submitted under this rule may be submitted to CCC by mail or FAX.

List of Subjects in 7 CFR Part 1435

Loan programs—agriculture, Price support programs, Reporting and Recordkeeping requirements, and Sugar.

Accordingly, 7 CFR part 1435 is proposed to be amended as follows:

PART 1435—SUGAR PROGRAM

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1359aa–1359jj and 7272 *et seq.*; 15 U.S.C. 714b and 714c.

2. In § 1435.200 revise paragraph (a), redesignate paragraph (g) as paragraph (h), and add new paragraph (g) to read as follows:

§ 1435.200 Information reporting.

(a) Every sugar beet processor, sugarcane processor, cane sugar refiner, and importer of sugar, syrup, and molasses shall report, by the 20th of each month, on CCC-required forms, its imports and receipts, processing inputs, production, distribution, stocks and other information necessary to administer the sugar programs. If the 20th of the month falls on a weekend or a Federal holiday, the report shall be made by the next business day.

* * * * *

(g) By November 20 of each year, each sugar beet processor, sugarcane processor, sugarcane refiner, and importer of sugars, syrups, and molasses will submit to CCC a report, as specified by CCC, from an independent Certified Public Accountant that reviews its

information submitted to CCC during the previous October 1 through September 30 period.

* * * * *

3. Revise § 1435.308(a) to read as follows:

§ 1435.308 Transfer of allocation, new entrants.

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer their share of the allocation from the processor that closed the facility to their new processor. If CCC determines to transfer the allocations, it will distribute the closed mill's allocation based on the contribution of the growers' production history to the closed mill's allocation. CCC may grant the allocation transfer upon:

(1) Written request by a grower to transfer allocation,

(2) Written approval of the processing company that will accept the additional deliveries, and

(3) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

* * * * *

Signed in Washington, DC, on August 18, 2005.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 05-17684 Filed 9-6-05; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Chap. XVII

Notice of Regulatory Review

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Request for comments.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is issuing notice of a regulatory review that will be conducted in accordance with the process set forth in OFHEO Policy Guidance titled, "Regulatory Review," which was issued on April 2, 2001 (Doc. #: PG-01-001) (Policy Guidance). OFHEO will review its regulations to consider whether existing regulations have become inefficient or create

unwarranted burden, and will identify possible revisions where such conditions are found. OFHEO is seeking public comment on its regulations for consideration in the regulatory review.

DATES: Written comments on this Notice must be received no later than November 7, 2005. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments to this Notice by any of the following methods:

- U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service: The mailing address for comments is: David A. Felt, Acting General Counsel, Attention: Comments/Notice of Regulatory Review, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- Hand Delivery/Courier: The hand delivery address is: David A. Felt, Acting General Counsel, Attention: Comments/Notice of Regulatory Review, Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, between 9 a.m. and 5 p.m. on business days.

- E-mail: Comments to David A. Felt, Acting General Counsel, may be sent by e-mail at RegComments@OFHEO.gov. Please include the title, Notice of Regulatory Review, in the subject line of the message.

Instructions: OFHEO requests that comments to this Notice include a reference to the title, Notice of Regulatory Review. OFHEO further requests that comments submitted in hard copy also be accompanied by the electronic version in Microsoft(®) Word or in portable document format (PDF) on 3.5" disk. Please see the section, **SUPPLEMENTARY INFORMATION**, below, for additional information on the posting and viewing of comments.

FOR FURTHER INFORMATION CONTACT:

David A. Felt, Acting General Counsel, telephone (202) 414-3750 (not a toll-free number); or Tina Dion, Associate General Counsel, telephone (202) 414-3838 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

The Federal Housing Enterprises Safety and Soundness Act of 1992, Title XIII of Pub. L. 102-550, empowers the Director of OFHEO to undertake

rulemaking and such other actions as the Director determines to be appropriate to oversee the activities and operations of Freddie Mac and Fannie Mae (the Enterprises). In the course of exercising such authority, the Director has promulgated regulations and issued guidelines and supervisory policies.

OFHEO's Policy Guidance

<http://www.ofheo.gov/News.asp?formmode=Regulations> creates a process for routine review and, where appropriate, revision of regulations by OFHEO. Such a process provides for planned reviews of the regulatory infrastructure and for considering information under uniform criteria that assists in determinations of whether an unnecessary burden exists. Once a review is completed, the Director will determine what steps may be necessary to relieve any unnecessary burden, including amendment to or repeal of existing regulations or issuance of less formal guidance.

The General Counsel, as the OFHEO Regulatory Policy Officer, is charged with undertaking the regulatory review and reporting findings and recommendations to the Director. The review process will be conducted by the Office of General Counsel, under the direction of the General Counsel, and will include internal consultation with other OFHEO offices and staff, guidance provided by the Director, as well as consideration of public comments. A review and report of findings and recommendations will be provided to the Director on a timely basis. The report of findings and recommendations will be privileged and confidential. Notably, the regulatory review to be conducted by the Office of the General Counsel under the Policy Guidance is not a formal or informal rulemaking proceeding under the Administrative Procedure Act and creates no right of action against OFHEO. Moreover, the determination of OFHEO to conduct or not to conduct a review of a regulation and any determination, finding, or recommendation resulting from any review under the Policy Guidance are not final agency actions and, as such, are not subject to judicial review.

Regulations Under Review; Criteria

The regulations of OFHEO that are subject to the regulatory review described in this Notice are codified in Title 12, Chapter XVII, Subchapters A, C, and D, Parts 1700-1780 of the *Code of Federal Regulations* (CFR). The regulations are listed in the CFR as follows:

Subchapter A—OFHEO Organization and Functions

Part

- 1700—Organization and functions
- 1701—Assessments
- 1702 Implementation of The Privacy Act of 1974
- 1703—Release of information
- 1704 Debt collection
- 1705 Implementation of the Equal Access to Justice Act

Subchapter B—[Reserved]**Subchapter C—Safety and Soundness**

- 1710—Corporate governance
- 1720—Safety and soundness
- 1730—Disclosure of financial and other information
- 1731—Mortgage Fraud Reporting
- 1750—Capital
- 1770—Executive compensation
- 1773—Flood insurance
- 1777—Prompt corrective action

Subchapter D—Rules of Practice and Procedure

- 1780—Rules of Practice and Procedure

In addition to being found in the CFR, the regulations (as well as the Policy Guidance referenced in this Notice) are available on the OFHEO Web site, <http://www.ofheo.gov>, by clicking on the “Regulations and Policy Guidance” category on the left side of the Web page.

Under the review process set forth in the Policy Guidance, criteria that may be used in the review of the existence of regulatory inefficiency or burden are as follows:

(i) Legal or regulatory developments, including new laws, executive orders or judicial decisions that have been adopted since the promulgation of a regulation that make such regulation inefficient, obsolete, contrary to controlling legal precedent or unduly burdensome;

(ii) Application by an Enterprise for revision of a regulation, because of reasonably discernible regulatory burden or inefficiency;

(iii) Marketplace developments, technological evolution and related changes that may have rendered an existing regulation, in whole or in part, inefficient, outmoded or outdated; and

(iv) Such other occurrences or developments as determined by the Director or General Counsel to be relevant to a review for inefficiency or unwarranted regulatory burden.

Among other factors that may be considered in reviewing possible inefficiency or unwarranted regulatory burden are the following:

(i) Compelling evidence that a consolidation of two or more regulations, elimination of a duplicative regulation, or other revision to

regulatory requirements would facilitate compliance or supervision;

(ii) A demonstration of a better alternative method to effect a regulatory purpose or requirement supported by compelling evidence of significantly less intrusive means or of a substantially more efficient method of accomplishing the same supervisory purpose; and

(iii) Such other factors as determined by the Director to be relevant to determining and evaluating the need for, appropriateness of, and effectiveness of a particular regulation.

Request for Comments

The Office of the General Counsel invites comments on all aspects of the proposed regulatory review, including legal and policy considerations, and will take all comments into consideration before issuing its report of findings and recommendations to the Director. The comment period has been set at 60 days to afford ample opportunity for comment.

All comments received will be posted without change to <http://www.ofheo.gov>, including any personal information provided. Copies of all comments received will be available for inspection by the public on business days between the hours of 10 a.m. and 3 p.m., at the Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414-6924.

Dated: August 30, 2005.

Stephen A. Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05-17656 Filed 9-6-05; 8:45 am]

BILLING CODE 4220-01-P

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

[Docket No. FAA-2005-22321; Directorate Identifier 2005-NM-123-AD]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 767-200 and -300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for

certain Boeing Model 767-200 and -300 series airplanes. This proposed AD would require replacing the placards on certain stowage bins with new placards, installing partial dividers in certain other stowage bins, and installing straps on stowage bins containing life rafts. For certain airplanes, this proposed AD would also require related concurrent actions. This proposed AD results from test data indicating that outboard overhead stowage bins are unable to withstand the 4.5g down-load standard intended to protect passengers during flight turbulence or a hard landing. We are proposing this AD to prevent the stowage bins from opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

DATES: We must receive comments on this proposed AD by October 24, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207 for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT:

Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM-150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6429; fax (425) 917-6590.

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-2005-22321; Directorate Identifier 2005-NM-123-

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 website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://dms.dot.gov>.

Examining the Docket

You 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

We have received test data from the manufacturer indicating that the outboard overhead stowage bins are unable to withstand the 4.5g down-load

standard intended to protect passengers during flight turbulence or a hard landing. The affected airplanes are certain Boeing Model 767-200 and -300 series airplanes. Under the 4.5g down-load condition, the threshold deflection of the stowage bins is too large and compromises the engagement of the doors. This condition, if not corrected, could result in the stowage bins opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, dated August 11, 2005. The service bulletin describes procedures for replacing the placards on certain stowage bins with new placards, installing partial dividers in certain other stowage bins, and installing straps on stowage bins containing life rafts. Although Revision 2 states that the original issue of Service Bulletin 767-25-0336 is dated September 18, 2003, the date that appears on that document is May 15, 2003.

For certain airplanes, Service Bulletin 767-25-0336, Revision 2, specifies prior or concurrent accomplishment of Boeing Service Bulletin 767-25-0211, Revision 1, dated July 14, 1994. Service Bulletin 767-25-0211, Revision 1, describes procedures for replacing the door latches, strikes, and thresholds on the outboard overhead stowage compartments with new, improved latches, strikes, and thresholds.

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

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Compliance Time for the Modifications

Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, specifies that it is not necessary to modify all of the stowage bins at one time, provided the modification of an individual bin is completed prior to the airplane returning to service. We agree with this statement, but want to clarify that the modification of all affected stowage bins must be completed within 60 months after the effective date of the proposed AD. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, and the time necessary to perform the modifications. We have determined that a 60-month compliance time is an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have coordinated this compliance time with Boeing.

Costs of Compliance

There are about 366 airplanes of the affected design in the worldwide fleet. The following tables provide the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

| Action | Work hours per kit | Average labor rate per hour | Cost of parts kit per airplane | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|--------------------|-----------------------------|--------------------------------|--------------------------------|-------------------------------------|--------------------------------------|
| Installation of placards, dividers, and straps. | Between 46 and 74 | \$65 | Between \$26,700 and \$44,196. | Between \$29,690 and \$49,006. | 138 | Between \$4,097,220 and \$6,762,828. |

ESTIMATED COSTS OF CONCURRENT SERVICE BULLETIN

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|--|-------------------|-----------------------------|-------------------------------|-------------------------------|-------------------------------------|------------------------------------|
| Installation of new door latches, strikes, and thresholds. | Between 24 and 31 | \$65 | Between \$7,000 and \$70,000. | Between \$8,560 and \$72,015. | 105 | Between \$898,800 and \$7,561,575. |

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 adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA-2005-22321; Directorate Identifier 2005-NM-123-AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 767-200 and -300 series airplanes, as identified in Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, dated August 11, 2005; certificated in any category.

Unsafe Condition

(d) This AD results from test data indicating that outboard overhead stowage bins are unable to withstand the 4.5g down-load standard intended to protect passengers during flight turbulence or a hard landing. We are issuing this AD to prevent the stowage bins from opening during flight turbulence or a hard landing, which could result in the contents of the stowage bins falling onto the passenger seats below and injuring passengers, or blocking the aisles, impeding the evacuation of passengers in an emergency.

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.

Replacement of Placards and Installation of Partial Divider Panels and Life Raft Straps

(f) Within 60 months after the effective date of this AD: Replace the placards on certain stowage bins with new placards, install partial dividers in certain other stowage bins, and install straps on stowage bins containing life rafts, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, dated August 11, 2005.

Actions Required To Be Accomplished Prior to or Concurrently With Paragraph (f) of This AD

(g) For Group 1 airplanes as identified in Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, dated August 11, 2005: Prior to or concurrently with the accomplishment of paragraph (f) of this AD, replace the door latches, strikes, and thresholds on the outboard overhead stowage compartments with new latches, strikes, and thresholds. Do the replacement in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767-25-0211, Revision 1, dated July 14, 1994.

Actions Accomplished Previously

(h) Accomplishment of the stowage bin modifications required by paragraph (f) of

this AD before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 767-25-0336, dated May 15, 2003; or Revision 1, dated October 21, 2004; is considered acceptable for compliance with the corresponding modifications specified in this AD.

Parts Installation

(i) As of the effective date of this AD, no person may install on any airplane a stowage bin having a part number identified in Table 2 of Figure 1 of Boeing Special Attention Service Bulletin 767-25-0336, Revision 2, dated August 11, 2005, unless it has been modified by performing the applicable actions in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) 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.

Issued in Renton, Washington, on August 24, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05-17670 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 382

[Docket No. OST-2005-22298]

RIN 2105-AC29

Nondiscrimination on the Basis of Disability in Air Travel—Medical Oxygen and Portable Respiration Assistive Devices

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Department of Transportation proposes to amend its rules implementing the Air Carrier Access Act of 1986, 14 CFR part 382, to provide greater accommodations in air travel for persons with respiratory disabilities. This notice of proposed rulemaking (NPRM) applies to U.S. air carriers and foreign air carriers operating flights in, to and from the U.S. The proposed rule establishes procedures within applicable U.S. and foreign safety rules for the carriage and use of portable respiration-related assistive devices and medical oxygen devices aboard commercial flights by passengers with disabilities.

DATES: Comment Closing Date: Comments must be received by November 7, 2005. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Please include the docket number of this document in all comments submitted to the docket. Written comments should be sent to Docket Clerk, Department of Transportation, 400 7th Street, SW., Room PL-401, Washington, DC 20590. For confirmation of the receipt of written comments, commenters may include a stamped, self-addressed postcard. The Docket Clerk will date-stamp the postcard and mail it back to the commenter. Comments are available for inspection at this address from 9 a.m. to 5 p.m., Monday through Friday. Comments can also be reviewed through the Dockets Management System (DMS) pages of the Department's Web site (<http://dms.dot.gov>). Commenters may also submit comments electronically. Instructions appear on the DMS Web site.

FOR FURTHER INFORMATION CONTACT: Ann G. Gawalt and Blane A. Workie, Office of Assistant General Counsel for Aviation Enforcement and Proceedings, 400 7th Street, SW., Room 4116, Washington, DC 29590. Phone: (202) 366-1677. TTY: (202) 366-9342. Fax: (202) 366-7152. E-mail: ann.gawalt@dot.gov or blane.workie@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress passed the Air Carrier Access Act (ACAA) which prohibits discrimination in airline service on the basis of disability. Since the Department issued the final rule implementing the ACAA, 14 CFR part 382 (part 382) in 1990, it has amended part 382 ten times.¹ Part 382 does not require any specific accommodations by air carriers for passengers who use supplemental medical oxygen during commercial flights.² In November 2004, the Department issued an NPRM proposing to revise part 382 to cover foreign air carriers (hereinafter Foreign Air Carrier NPRM). See 69 FR 64364.

¹ The dates and citations for these amendments are the following: April 3, 1990; 55 FR 12341; June 11, 1990; 55 FR 23544; November 1, 1996; 61 FR 56422; January 2, 1997; 62 FR 17; March 4, 1998; 63 FR 10535; March 11, 1998; 63 FR 11954; August 2, 1999; 64 FR 41703; January 5, 2000; 65 FR 352; May 3, 2001; 66 FR 22115; July 8, 2003; 68 FR 40488.

² Under 14 CFR 382.33(b)(1), an air carrier may require a passenger to provide 48 hours advance notice to request medical oxygen for use on board the aircraft, if the carrier chooses to make this service available on the flight.

That Foreign Air Carrier NPRM does not contain any proposed substantive regulatory changes relating to the carriage and use of medical oxygen by passengers with disabilities aboard commercial flights.

The Department is proposing a rule at this time to address the carriage and use of supplemental oxygen devices by passengers on commercial flights. There are several reasons for this initiative. First, the Department consistently receives complaints from consumers regarding the lack of accommodations in air travel for passengers who use medical oxygen. These complaints generally allege that there are a limited number of carriers that provide supplemental oxygen service (several major carriers do not); that the service, when available, is prohibitively expensive, at times exceeding the cost of air transportation³; and that those passengers who need supplemental oxygen have to independently arrange with medical supply companies for additional supplies of oxygen during layovers and connections between flights. As a result, many passengers with respiratory disabilities are not able to avail themselves of air transportation readily available to the general public. Because the Department views these consumer complaints and the issues they raise seriously, the Department is proposing to amend part 382 to address these matters.

Second, we believe a rulemaking is necessary because of the technological advances in oxygen-delivery systems. In April 2002, a letter from a coalition of medical and patient groups made the Department aware of state of the art technology in three types of oxygen delivery systems: portable oxygen concentrators, portable liquid oxygen units, and safety-sealed compressed oxygen. The Department then carefully considered how these devices could be approved for carriage and use by passengers during commercial flights within the existing safety regulatory scheme.

During this process, the Department's Pipeline and Hazardous Materials Safety Administration (PHMSA), formerly the Research and Special Programs Administration (RSPA), determined that the portable concentrator units manufactured by AirSep Inc. and Inogen Inc. do not contain hazardous materials and therefore are not subject to PHMSA's regulations. The other two

³ The Department is aware of one survey which shows that the cost of supplemental oxygen can range from an additional \$64 to \$1500 per trip. James Stoller, A Comparative Analysis of Arranging In-Flight Oxygen Aboard Commercial Air Carrier, Chest (April 1999).

devices (liquid oxygen units and safety-sealed compressed oxygen), unless exempted, would be subject to 49 CFR 175.75(a), PHMSA's safety regulation covering the carriage of hazardous materials aboard commercial aircraft.

The Federal Aviation Administration (FAA) also made several important determinations with respect to oxygen delivery systems. First, it decided that the carriage and use of all oxygen delivery devices, including portable concentrators deemed not to contain hazardous material, would require either an exemption from 14 CFR 121.574, 125.219, or 135.91, its rules covering oxygen delivery systems, or approval through a separate rulemaking. Because it did not receive an exemption petition from an air carrier prior to July 2004, the FAA issued an NPRM proposing to permit air carriers to allow passengers to use certain types of portable oxygen concentrators during commercial flights subject to certain conditions. See 69 FR 42324. On July 12, 2005, the FAA issued a final rule that permits air carriers to allow passengers to use Air Sep Lifestyle and Inogen One portable oxygen concentrator units during commercial flights provided carriers and passengers comply with certain conditions. See 70 FR 40156. As a corollary to the FAA rulemaking on allowing the use of certain portable oxygen concentrators, the Department is now proposing a rulemaking to address the treatment of these portable oxygen concentrators as an assistive device in air travel.

The FAA also determined that other passenger-owned medical oxygen devices could be used during commercial flights if the air carrier agrees to inspect and test the equipment in accordance with 14 CFR 121.574, 125.219, or 135.91, as appropriate, and then furnish the devices to the passengers for their flights.

Finally, the Department is proposing a rule because passengers who use other respiratory assistive devices such as respirators and ventilators have also complained that they have not been able to travel on certain flights because carriers were concerned about possible electromagnetic interference (EMI) with aircraft navigation and communication systems. Because portable electronic devices including portable electronic assistive devices emit some type of electromagnetic waves, FAA safety regulations require that air carriers test these devices to determine if the devices' radio frequencies interfere with its aircraft's systems before permitting the devices to be used in flight. We believe a number of foreign governments have similar requirements.

Currently, part 382 requires carriers to permit the carriage and the use of ventilators and respirators in accordance with PHMSA and FAA regulations. As proposed, the Foreign Air Carrier NPRM would impose the same requirement on foreign air carriers. However, neither part 382 nor the Foreign Air Carrier NPRM requires carriers to conduct the necessary EMI evaluation required under FAA rules or applicable foreign rules to determine whether the use of these devices would cause interference with aircraft navigation and communication systems. Therefore, the Department is proposing this rule to address this gap in the regulations so that passengers who use ventilators or respirators can be assured greater access to air travel.

Formatting

This NPRM has been formatted in accord with the format of the Foreign Air Carrier NPRM issued on November 4, 2004, which proposes to apply 14 CFR part 382 to foreign air carriers and convert part 382 into a question-and-answer format. The Department proposes that the instant NPRM apply to foreign carriers. Additionally, the Department will ultimately merge the final rule resulting from the instant NPRM with any final rule that results from the November 4, 2004, Foreign Air Carrier NPRM. Because of this, the instant NPRM is in a question-and-answer format and the section numbering is consistent with the November 4, 2004, NPRM.

Section-by-Section Analysis

This portion of the preamble discusses each section of the proposed rule.

Section 382.3 What do the Terms in This Part Mean?

This section proposes to supplement the proposed rule text of the November 2004 Foreign Air Carrier NPRM by adding the meaning of the term "PHMSA."

Section 382.5 To Whom do the Provisions of This part apply?

This NPRM proposes to be applicable to certain U.S. and foreign air carriers. The instant NPRM applies to foreign air carriers in nearly the same manner as proposed in the November 4, 2004, Foreign Air Carrier NPRM since the proposed rule would apply to any flight that begins or ends at a U.S. airport, as the word "flight" is defined in the NPRM. To the extent that individuals have already submitted comments regarding the extension of part 382 to foreign carriers in response to the

November 4, 2004, Foreign Air Carrier NPRM, those comments will be considered with regard to the final rule issued as a result of the instant NPRM.

However, this NPRM does not propose to make the requirements relating to the carriage and use of portable respiration assistive devices and medical oxygen devices aboard commercial flights applicable to all U.S. carriers and foreign air carriers operating to and from the U.S. but rather proposes to limit the applicability of the requirements to certain U.S. and foreign air carriers as described in sections 382.133 and 382.135. As a result, the instant NPRM would change section 382.5 as proposed in the Foreign Air Carrier NPRM by adding the phrase "except as otherwise indicated within this part" to section 382.5(a) which addresses the applicability of part 382 to U.S. carriers and 382.5(b) which addresses the applicability of part 382 to foreign air carriers. No other change to section 382.5 has been made.

Section 382.133 What Are the Requirements Concerning the Evaluation and Use of Passenger-Owned Electronic Devices That Assist Passengers With Respiration in the Cabin During Flight and That do not Contain Hazardous Materials?

FAA regulations state that U.S. air carriers may not permit passengers to operate portable electronic devices during a flight except for certain devices listed in those sections and any other device that the carrier has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used. See, 14 CFR 91.21, 121.306 and 135.144. The Department recognizes that foreign carriers operate under a variety of safety laws and regulations, and is proposing that foreign carriers permit passengers to carry and use electronic devices consistent with the foreign law involved. In proposed section 382.133, the Department is proposing that U.S. and foreign air carriers be required to (1) test certain types of electronic respiratory assistive devices in accordance with U.S. and foreign safety rules, as applicable, and (2) permit the use of those devices within applicable U.S. and foreign safety regulations during all phases of commercial flight if they have had positive safety determinations.

Applicability to Carriers

As proposed, section 382.133 applies to all U.S. carriers that conduct passenger-carrying service other than those carriers that are operating as on-demand air taxis. An on-demand air taxi

is an air taxi operator which carries passengers or property and is not a commuter air carrier as defined in 14 CFR part 298. A commuter air carrier is an air taxi operator that carries passengers on at least 5 round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week and places between which those flights are performed. See, 14 CFR 298.2. This proposal also applies to foreign air carriers operating to and from the United States that conduct passenger-carrying service and are not on demand air taxi operators. We specifically request comment as to whether the Department should limit coverage of this section to carriers operating larger than 60 seat aircraft, *i.e.*, excluding carriers operating only small aircraft. Do carriers that operate only small aircraft have special needs or problems with complying with proposed section 382.133 of which the Department should be aware? Also, should the scope of this section be further limited so that flights performed by commuter carriers would not be covered?

Types of Portable Respiration-Related Assistive Devices Covered

Section 382.133 proposes to address the carriage of four types of respiratory devices: ventilators, respirators, continuous positive airway pressure (CPAP) machines, and portable oxygen concentrators excepted from coverage under 14 CFR 121.574 and 135.91. The language of 382.133(a) is intended to make clear that this section covers only those oxygen concentrators that the FAA, through a rulemaking, has specifically excepted from 14 CFR 121.574 and 14 CFR 131.91 coverage. Currently, the Air Sep Lifestyle and Inogen One portable concentrator units have been excepted from such coverage and qualify under subsection (1).

If an applicable foreign safety regulation precludes a foreign carrier from permitting passengers to carry the four types of respiratory devices mentioned above, this section would not require their carriage or use. The language of 382.133(b) is intended to make clear that this section only covers those respirators, ventilators, CPAP machines and oxygen concentrators that are not restricted by foreign government safety rules. As stated previously, it is the Department's intention to address the carriage and use of electronic respiratory devices within applicable safety rules. Therefore, as an example, if a foreign carrier is prohibited from carrying an oxygen concentrator because of its homeland safety requirements,

then that foreign carrier would not be required to test, carry, or permit the use of such device on flights to and from the U.S. The Department seeks comment and information from foreign governments, foreign carriers, and other interested parties on the following questions regarding foreign safety restrictions affecting the carriage and use of electronic respiratory assistive devices. What foreign governments, if any, prohibit the carriage and use of respiratory devices? What devices, if any, are specifically prohibited by foreign safety rules? Describe safety restrictions other than prohibitions on these types of devices. Other than safety prohibitions or restrictions, what other foreign restrictions apply to the carriage and use of electronic assistive devices?

Proposed Testing Requirements

Section 382.133 proposes to require that, upon a request from a person with a disability or manufacturer of a device described above to a U.S. or foreign air carrier, the carrier would make a one-time determination whether such respiration assistive device can be carried safely in accordance with FAA or applicable foreign safety rules. For U.S. carriers, the rule proposes that carriers first determine whether the device is electronic and therefore subject to FAA regulations, *i.e.*, 14 CFR 91.21, 121.306 or 135.144. If the device is subject to those regulations, proposed section 382.133(a)(2) would require that U.S. air carriers conduct the necessary evaluation and/or electromagnetic (EMI) testing to determine whether such a respiratory assistive device causes interference with aircraft communication and navigation systems. Under subsection 382.133(b) foreign air carriers would also be required to make any necessary evaluations or conduct any necessary testing under applicable foreign requirements to determine if such device can be safely used during flight.⁴ The Department requests comments as to the benefit or detriment of requiring passengers requesting the testing of ventilators, respirators, CPAP machines, and portable oxygen concentrators to either provide carriers with the applicable manufacturer's contact information when submitting the device for testing or to have the manufacturer provide the device directly to the carrier.

⁴ Foreign air carriers that are operating U.S. registered aircraft on flights in, to, and from the United States could be subject to the safety requirements of 14 CFR 91.21. Foreign air carriers operating non-U.S. registered aircraft may also be subject to foreign requirements similar to section 91.21.

This section also proposes that U.S. air carriers test each device model for each model of aircraft that they operate. With respect to foreign carriers, this section proposes to require that foreign carriers test each device model for each aircraft model that they operate on flights to and from the United States. The testing for a device model is intended to be limited to a one-time testing event for each aircraft model covered by the rule. The Department intends that once a carrier completes the review and testing of a device, then the carrier would permit all positively tested devices of the same model to be used by passengers with disabilities on that model of aircraft. In other words, if a carrier determines that "Acme ventilator" owned by Passenger X does not cause interference with its Airbus A-320 or Boeing 747-400 aircraft that it operates and therefore permits Passenger X to use it on his flight, then Passenger Y and all other qualified passengers should be permitted to use the same model of the "Acme ventilator" during all flights on A-320's or 747-400's operated by that carrier.

The Department expects that carriers will test any device submitted for use during all phases of flight, including take-offs and landings. Since these devices are used to assist a person to breathe, a passenger may need to use his or her device during ascent and descent. Of course if a device is found to interfere with navigation or communications equipment during a particular phase of a flight, then its use must be prohibited during that phase of flight.

The Department recognizes that this proposal could require a carrier to conduct a number of tests during the initial compliance phase that other carriers will conduct or have conducted. However, as noted by the FAA in its July 12, 2005, final rule on use of certain portable oxygen concentrator devices onboard aircraft, if a medical portable electronic device (M-PED) such as the Inogen One or the AirSep Lifestyle has been tested to meet the Radio Technical Commission for Aeronautics (RTCA) standard found in FAA Advisory Circular 91.21-1A, and the test results are provided to, and verified by, the aircraft operator, no further testing by the aircraft operator would be required. The Department seeks comment on other ways, if any, to streamline the testing requirement for respiratory devices, including whether aircraft manufacturers should have a role in evaluating devices for use on a given model of aircraft.

Time Limits for Testing and Acceptance of a Device

The Department is proposing that a carrier have 90 days from receipt of a request to test a device on each model of aircraft it operates, and 30 days from the date of a positive determination to implement procedures to permit the device's use. The Department is proposing a total of 120 days to conduct the evaluation and make operational decisions and changes, if any, because such a timeframe appears to be a reasonable time given the number of models of aircraft some carriers operate. The Department seeks comment with respect to the amount of time reasonably necessary to conduct required evaluations and testing.

Requirements Regarding Use of Respiratory Assistive Devices

Section 382.133(d) proposes to require that carriers allow passengers to carry on board and use a portable respiratory assistive device on any aircraft model on which the device passed its safety evaluation and testing. Consistent with the FAA final rule on portable oxygen concentrators, subsection (d) does not propose to permit carriers to prohibit the use of these respiratory assistive devices during the ascent and descent stages of the flight, assuming use of the device is determined to be safe. However, if a carrier determines that a respiratory device can not be safely used during the ascent and descent, but can be used during all other phases during a flight, the carrier must permit use of that device during those phases when it can be safely used. The reason for this proposal is that some users of CPAP machines and oxygen concentrators do not need to use their devices until they reach a certain altitude such as cruising altitude or can go without using their devices during takeoff and landing. Because this proposal deviates from some carriers' standard practice in which all electronic devices are turned off during take-off and landing, the Department seeks comments as to any issues that may arise as a result of this particular proposal.

The intent of section 382.133 as proposed is to create a system where on the day of flight a passenger with a disability can carry his or her approved respiratory device, such as a portable oxygen concentrator, from his or her home to the airport, through check-in, to the gate, and then on to the aircraft for

use during flight.⁵ It is also worth noting that section 382.41(c) of the current rule requires U.S. carriers to permit passengers with disabilities to stow assistive devices, including the four types of respiratory devices addressed in this NPRM, in the cabin consistent with FAA safety regulations. The November 4, 2004, NPRM proposed to extend this same requirement to foreign carriers in section 382.121. The instant NPRM maintains this requirement of the current rule and proposed section 382.121 of the November 4, 2004, NPRM. Further, it raises five additional issues on which the Department solicits comment:

(1) Passenger Information. We believe that a passenger who uses a respiratory device could have an extremely frustrating travel experience if he or she discovers on the day of the flight that the carrier will not accept his or her particular model of device because it can cause interference with the navigation or communication systems on the aircraft model the carrier is using to operate the passenger's flight. Part 382 currently requires that when a passenger with a disability requests information about an accommodation, the carrier must provide this passenger information on any limitation involved in providing the accommodation in question. See 14 CFR 382.45(a)(2). Also see, 14 CFR 382.41 in the November 4, 2004 Foreign Air Carrier NPRM. We have interpreted this section to mean that carriers must inform passengers who inquire about oxygen service or who make reference to a respiratory disability if accommodations such as the provision of medical oxygen are not offered for certain flights. Therefore, we believe that 382.45(a)(2) would require that carriers inform passengers, on request, about any restrictions on using their personal respiratory assistive devices aboard the carrier's flights. For example, we would expect that a carrier would explain to a passenger who requests to use an "Acme CPAP machine" on flight 123 that this device can only be used on flight 123 after takeoff and before landing, if appropriate. We would also expect that a carrier would inform the passenger, upon request, about the availability or lack thereof of electrical outlets on board aircraft that might be available to power the device.

To provide this type of information, we anticipate that carriers would need to maintain a list or some type of operational guidance for its reservations

agents itemizing the devices the carriers have evaluated and the results of the evaluations. The Department seeks comments on the following questions: What issues are involved in air carriers maintaining a centralized list of approved and disapproved devices? To what extent should carriers be required to provide information to disabled air travelers? Should carriers be required to inform passengers if a device is in the process of being evaluated? Should information about evaluations and acceptance/rejection of particular devices be placed on each carrier's Web site? What issues are raised if carriers are required to provide information on the limitations of the carriers' codeshare partners to accommodate the use of respiratory devices? What issues are raised in connection with codeshares if the ticketing carrier is aware that the carrier operating the codeshared flight has not conducted the necessary testing to allow for the use of a respiratory device? What process or procedures do U.S. carriers use today to ensure their travel agents comply with current requirements in section 382.45 regarding providing information to passengers about the accessibility features of an aircraft (e.g., location of movable armrests, limitations on the ability of the aircraft to accommodate qualified individuals with disabilities)? Would carriers be able to use the same or similar method to ensure their travel agents inform passengers who inquire about oxygen service or who make reference to a respiratory disability if appropriate accommodations are not offered for certain flights?

(2) Advance Notice: Currently, section 382.33(b) permits carriers to require passengers who request medical oxygen service for their flight or who plan to hook up their respirator to the aircraft's electrical supply to provide 48 hours advance notice. What are the operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use a battery-operated CPAP machine, an approved portable oxygen concentrator, or a respirator or ventilator aboard a flight? What are the operational reasons, if any, in support of permitting carriers to require a passenger with a disability to provide advance notice of his or her intention to use the aircraft electrical system? What issues would arise for passengers with disabilities if carriers were permitted to require advance notice for use of a respiratory device? What is a reasonable amount of advance notice?

(3) Advance check-in time: Current section 382.33(b) also permits air

carriers to require that passengers who request medical oxygen service for their flight or who plan to hook up their respirator to the aircraft's electrical supply to check in an hour prior to their flight. What are the operational reasons, if any, for requiring passengers who request to use their respiratory assistive device to comply with an advance check-in deadline? What issues would passengers who use respiratory assistive devices face if carriers were permitted to require an advance check-in deadline? What would be a reasonable length of time for the advance check-in? Would an hour before the check-in time set by the carriers for general boarding passengers to present themselves at the airport be a reasonable amount of time to conduct any necessary check-in procedures associated with the carriage of the device? Should the length of time for advance check-in differ for international flights?

(4) Seating accommodations: We believe that a passenger who uses electronic respiratory assistive devices (e.g., ventilator, respirator, CPAP machine, or portable oxygen concentrator) should be given priority over users of other types of electronic equipment that are not assistive devices (e.g., laptops) to plug the device into the aircraft's power supply consistent with FAA and foreign safety requirements. As such, we are seeking comment on whether to require that, if an electrical outlet is available on the aircraft and can safely be used, carriers must provide a seat, in the same class of service, closest to the electrical outlet to a passenger who self-identifies as using the electronic respiratory assistive device and requests such a seat. The Department also seeks comment on whether there are any practical problems to implementing the proposed seating accommodation. If there are problems, we seek comment on how to avoid them while still accommodating passengers in this situation.

(5) Batteries: Because respirators, ventilators, CPAP machines and the covered oxygen concentrators can be powered by batteries, the Department is seeking additional information in this area. More specifically, DOT requests comments as to whether it should allow carriers to require users of electronic respiratory devices to carry a certain number of batteries in instances where electrical outlets are not available on an aircraft. Should the Department also allow carriers to require users of electronic respiratory devices to carry a certain number of batteries even in instances where an aircraft has an electrical outlet available as a way of protecting against unexpected

⁵ The Transportation Security Administration has developed standard operating procedures to screen respiratory devices for security purposes.

occurrences (e.g., the aircraft electrical system is inoperative or otherwise unusable or an aircraft without outlets is suddenly substituted for an aircraft with outlets)? The Department recognizes that the FAA final rule on use of certain portable oxygen concentrator devices onboard aircraft issued on July 12, 2005, states that the user of a portable oxygen concentrator must carry on the flight a sufficient number of batteries to power the device for the duration of the oxygen use specified in the user's physician statement, including a conservative estimate of any unanticipated delays. DOT seeks comment regarding what action it should authorize the carrier to take if a passenger does not have available to carry on a flight a sufficient number of batteries to power an electronic respiratory assistive device.

The Department further seeks comment and information as to whether manufacturers place labels on all ventilators, respirators, CPAP machines, and/or Air Sep Lifestyle and Inogen One portable oxygen concentrators which would provide carriers assurance that the batteries to be used for these devices are approved for air travel. If such a label is not present on a device, DOT seeks comment on whether carriers should be permitted to prohibit a passenger with a disability from carrying the device or using it during flight. The Department requests comments regarding the benefit or determinant of such an approach. DOT also seeks comment regarding what action it should authorize the carrier to take or what action to require the carrier to take if a passenger does not ensure that the electronic device batteries carried are packaged in a manner that protect them from physical damage as required by the FAA.

Section 382.135 What Are the Requirements Concerning the Provision of Medical Oxygen for Passengers With Disabilities?

In this section, the Department is proposing to require carriers to provide in-flight medical oxygen to passengers with disabilities who request and require it on commercial flights in accordance with applicable safety rules.

Applicability to Carriers

As proposed, section 382.135 would apply to U.S. carriers that conduct passenger-carrying service with at least one aircraft having a designed seating capacity of more than 60 passengers and foreign air carriers operating to and from the United States that conduct passenger-carrying service with at least one aircraft having a designed seating

capacity of more than 60 passengers. It is worth noting that under this NPRM if a U.S. carrier operates both large aircraft (aircraft with more than 60 seats) and small aircraft, then all flights of that airline are covered regardless of the size of the aircraft used on a particular flight. If a foreign airline operates both large and small airplanes to and from the United States, the flights on the small airplanes would be covered because the airline holds authority to fly large airplanes. We request comment about the feasibility and/or difficulties inherent in providing in-flight medical oxygen in small aircraft. Should the scope of this section be limited to large aircraft (aircraft with more than 60 seats)? What would be the harm or benefit of such a limitation? The kinds of foreign air carriers that we propose to cover under this NPRM in terms of scheduled carriers flying large aircraft are as similar as possible to the U.S. air carriers that we propose to cover considering the different legal authority applicable to foreign operators.

Applicable Safety Regulations

This NPRM is designed to create greater access to air travel for persons who use medical oxygen by proposing a system within the existing aviation safety regulatory structure concerning oxygen. U.S. and foreign air carriers are subject to 14 CFR 121.574 and 135.91. Sections 121.574 and 135.91 specifically apply to U.S. carriers. Although these two sections do not specifically apply to foreign carriers, foreign carriers are nonetheless required to follow 14 CFR 121.574 and 135.91 when providing medical oxygen because of the U.S. regulations regarding the carriage of hazardous materials. Specifically, 49 CFR 175.10(a) (7) requires foreign carriers to follow the standards set forth in 14 CFR 121.574 or 135.91 when providing medical oxygen on commercial flights in U.S. airspace.

Sections 121.574 and 135.91 set forth a number of safety requirements for carriers to follow when providing medical oxygen. Some of these requirements include: (1) The medical oxygen device used by the passenger must be provided by the carrier, (2) a passenger who uses a carrier-supplied medical oxygen device must demonstrate to the carrier that he or she has a medical need for such device by providing a medical statement signed by a licensed physician which specifies the maximum quantity of oxygen needed each hour and the maximum flow rate needed for the pressure altitude corresponding to the pressure in the cabin of the aircraft, and (3) no person, other than carrier personnel, may

connect or disconnect a passenger to and from a gaseous oxygen cylinder while any other passenger is aboard the aircraft.

This section also proposes to require that U.S. and foreign air carriers adhere to any applicable Transportation Security Administration (TSA), FAA, PHMSA, and foreign safety regulations when providing medical oxygen service. The Department recognizes that in some situations more restrictive foreign aviation regulations rather than FAA, TSA, or PHMSA rules may govern the actions of foreign carriers with respect to the carriage and use of medical oxygen aboard aircraft.

Type of Carrier-Supplied Oxygen Devices

Section 382.135 proposes a system where carriers would be required to provide oxygen devices covered by 14 CFR 121.574 or 135.91, such as compressed oxygen canisters. The Department understands that compressed medical oxygen dispensed from canisters can provide a purity of oxygen and flow rate that are required by most if not all individuals dependent on medical oxygen. The Department recognizes that devices such as the Air Sep AirLife oxygen concentrator unit,⁶ Air Sep Lifestyle portable oxygen concentrator unit, and Inogen One portable oxygen concentrator unit did not exist when 14 CFR 121.574 or 135.91 were initially adopted by the FAA. However, it appears from the manufacturers' materials that oxygen concentrators can deliver a comparable purity of oxygen and flow rate to that of a canister. The Department would be willing to consider a carrier that provides a concentrator in lieu of a compressed oxygen canister to be in compliance with this proposed requirement if the concentrator provided the same medical oxygen service as a compressed oxygen canister. Therefore, the Department seeks comment from the medical professional community, manufacturers of oxygen devices, persons dependent on medical oxygen, air carriers, and all other interested parties to address the following questions: Do oxygen concentrators provide medical oxygen at a purity level and flow rate required by most individuals dependent on medical oxygen? What other devices dispense medical oxygen with the same or comparable purity and flow rate as compressed oxygen delivered from a

⁶ This is a large concentrator unit designed to fit underneath the seat of an aircraft and is apparently used by some foreign air carriers to provide medical oxygen to passengers with disabilities.

canister? What medical reasons would prevent a person who requires medical oxygen from using a large (e.g. the Air Life concentrator) or portable oxygen concentrator?

Extent of the Medical Oxygen Service

Proposed section 382.135 would require that U.S. and foreign carriers provide only in-flight medical oxygen service. This means that under this proposal, carriers are only required to provide a medical oxygen device to a requesting passenger with a disability for use on board the aircraft. Passengers who require medical oxygen in canisters in the airport must arrange with oxygen suppliers for separate airport service for several reasons.⁷ First, FAA safety rules contemplate that carrier-supplied oxygen will only be provided on the aircraft itself and not in the airports. Second, the cost to provide medical oxygen service from a passenger's arrival at the curb for departing flight to the curb upon arrival of a passenger's flight would be prohibitively expensive because a carrier would have to train and assign personnel to stay with the oxygen device while in the airport in order to maintain control of the device as required by FAA rules.

Advance Notice Requirements

This section would not amend the current requirement that carriers that provide medical oxygen to passengers with disabilities may require up to 48 hours' advance notice from the passenger for the service. Should the Department require a longer period of time for advance notice for international flights?

Timeframe To Implement a Carrier-Supplied Medical Oxygen System

Carriers would have up to six months from the date the rule becomes final to establish a system to provide medical oxygen to passengers with disabilities upon request. The Department seeks comment on what a reasonable amount of time would be to establish a system to provide medical oxygen to passengers with disabilities.

Other Issues

The Department seriously considered proposing that U.S. and foreign air carriers be required to implement a system that would allow passengers before their trips to submit their own canisters of compressed oxygen to carriers for testing. The Department considered a system in which a passenger would have been permitted to

submit his or her own canisters of compressed oxygen to a carrier at least five days prior to his or her flight for carrier inspection and maintenance of the canisters in accordance with applicable safety regulations. The carrier would then have been required to furnish the devices to the passenger for use during the passenger's flight if the canisters were deemed safe. If the canisters were not deemed safe, the Department considered proposing that the carrier be required to return the oxygen canisters to the passenger with a written explanation as to why the passenger's device was not acceptable no later than 24 hours prior to the passenger's flight and refund any unused portion of the passenger's ticket.

However, after further review, it became apparent that the above approach, if proposed, would create several problematic issues for both passengers and air carriers. First, the system would have deprived oxygen users of their oxygen canisters for at least 5 days in order to allow enough time for the carriers to conduct FAA-mandated testing, inspection, and maintenance of the canisters. This would have created a burden on passengers who would have had to order additional canisters from suppliers in order to be assured they had enough canisters to cover the 5 days the carrier had control of their devices.

This system also would have created a complicated procedure requiring coordination between passengers, air carriers, and oxygen suppliers. For example, a carrier would have had to create a place to accept and stow the devices, communicate clearly to the passenger where to deliver the devices and train employees to appropriately accept the devices in order to obtain the necessary information about the canisters. The carrier would then have had to either create an in-house system to inspect and test the canisters or create a system in which it transported the oxygen canisters to approved medical oxygen suppliers to conduct the testing. All carriers would also have had to arrange for the oxygen canisters to be delivered to the passenger's point of departure. This coordination would have had to have been accomplished at least 36 hours prior to the passenger's flight in order to provide the carrier with enough time to inform the passenger if the canister failed the required tests.

Most importantly, under current FAA regulations, an air carrier can only provide oxygen canisters to passengers for use during flight that the carrier has purchased new or those on which the carrier has performed its last hydrostatic

safety test. In order to conduct a hydrostatic test on the canister, the canister must be purged of its compressed oxygen. Therefore, because of current FAA safety regulations, carriers would still be required to fill empty canisters after their testing and inspection by the carriers. Moreover, oxygen tanks can be subjected to hydrostatic testing only a limited number of times for safety reasons. For all of the reasons discussed above, the Department has concluded that an effective system in which a passenger submits his or her own compressed oxygen canister system for carrier inspection and maintenance cannot be created at this time. Therefore, the Department will address the use of medical oxygen tanks by proposing to require a system in which carriers' supply their own medical oxygen tanks to the passengers.

The Department has also received a letter from a coalition of medical professionals and users of supplemental oxygen asking the Department to consider creating a system for the provision of medical oxygen by using pre-approved oxygen delivery kits. The coalition asked if the Department would consider whether passengers could rent or purchase oxygen kits from an oxygen vendor approved by DOT, FAA or the Department of Homeland Security. A passenger would pick up his or her device from a pre-approved vendor and carry the device in its tamper proof container to the airport for check-in on the day of the flight. The passenger would present the unopened tamper-proof oxygen kit to the airline staff. The airline staff would be responsible for ensuring that the oxygen kit (1) has not been tampered with and (2) is an approved oxygen system. As a preliminary response, the Department notes that the provision of any oxygen delivery device that contains hazardous material or has not been the subject of a rulemaking or an exemption from FAA rules must comply with the requirements set forth in 14 CFR 121.574 or 135.91. Chief among these is the requirement that the carriers maintain and furnish any oxygen-delivery system. The Department seeks comments and information on how such a pre-approved delivery kit proposal could be implemented consistent with FAA and foreign government safety regulations.

⁷ Passengers may also use their own oxygen concentrator units in airports.

Section 382.137 May a Carrier Charge a Passenger for Costs Related to the Use of Passenger-Owned Respiration Assistive Devices or the Provision of Carrier-Supplied Medical Oxygen Devices?

This section proposes that respiratory assistive devices and oxygen delivery systems be accorded the same treatment as other assistive devices and disability-related services required under part 382 such that a passenger would not be charged a fee for carrier-supplied medical oxygen, excess baggage fees for a passenger's respiratory assistive device, or fees for the cost associated with inspecting or testing a passenger's respiratory assistive device.

The Department recognizes that this proposal would end the ability of air carriers to charge for the provision of medical oxygen, as they currently do. The Department also wishes to carefully evaluate the impact that the costs of such a required system would have on the airline industry. The regulatory evaluation prepared in conjunction with this NPRM found that the provision of a medical oxygen service at no cost to the disabled passengers would be a cost beneficial system. However, the Department is well aware that because of the unique characteristics of medical oxygen, the provision of medical oxygen can be costly. For example, medical oxygen is more costly than other type of compressed oxygen because it's required to be highly pure oxygen.

Generally, carriers may not charge passengers for disability-related services that provide equal access to air transportation because such charges would have a discriminatory effect. However, the Department seeks comment on whether the law would permit carriers to charge for the provision of medical oxygen? Specifically, the provision of medical oxygen may be distinguishable from other disability-related services because it requires a physician's prescription in order to obtain the service from the air carrier. In addition, the Department seeks comment on whether the Department has the authority to regulate the reasonableness of such charges under the ACAA or limit the charges to the carrier's costs if the law would permit carriers to charge for the provision of medical oxygen?

The Department also wishes to clarify that under this proposal carriers cannot charge passengers for an additional seat if the oxygen canisters or other dispensing equipment is stowed under the passenger's seat or beneath the seat in front of the passenger using the medical oxygen. However, if the

passenger who requires medical oxygen must in fact use more than one passenger seat because the equipment takes the space of two seats, then that passenger can be charged for an additional seat. On lengthy flights, carriers would have to stow oxygen tanks not in use in other stowage space on a priority basis.

Regulatory Analysis and Notices

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

The Department has determined that this proposed rule is nonsignificant for purposes of both Executive Order 12866 and the Department of Transportation Regulatory Policies and Procedures. Because this NPRM will impose new requirements on U.S. and foreign carriers, however, the Department has produced a regulatory evaluation. The evaluation has determined that the proposals as set out in this NPRM are cost beneficial.

Specifically, the regulatory evaluation estimates that for all U.S. carriers covered by these proposals, the average annual costs associated with this NPRM for U.S. carriers, when discounted to present value, would range from \$18.6 million to \$39.1 million. The analysis determined that for U.S. carriers the total annual benefits, also discounted to present value, would range from \$40.2 million to \$100.6 million. For foreign carriers, the regulatory evaluation estimated that the average annual total costs associated with this NPRM would range from \$4 million to \$6.87 million and the total benefits would range between \$18.52 million and \$59.6 million. The Department seeks comment on the regulatory evaluation, its approach, and the accuracy of its estimates of costs and benefits.

Executive Order 13132 (Federalism)

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This notice of proposed rulemaking would not (1) have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) impose substantial direct compliance costs on state and local governments; or (3) preempt State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13084

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. I hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. A direct air carrier or a foreign air carrier is a small entity if it provides air transportation only with small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds). See 14 CFR 399.73. This NPRM reduces costs to small carriers by proposing not to apply to them the more costly provision which would require a carrier to provide in-flight medical oxygen upon request. Taking into account the flexibility of the NPRM and the low overall costs, we conclude that the cost of compliance with this rule for small businesses will not have a significant impact on small businesses. Therefore, this rule will not have a significant economic impact on a substantial number of small businesses.

Paperwork Reduction Act

The proposed rule does not contain information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 2507 *et seq.*).

Unfunded Mandates Reform Act

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

List of Subjects in 14 CFR Part 382

Air carriers, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 17th day of August, 2005, at Washington, DC.

Norman Y. Mineta,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation is further proposing to amend the proposed rule published at 69 FR 64364, November 4, 2004, as follows:

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 41702, 41310, 41705, and 41712.

2. In § 382.3, add the definition of “PHMSA” in alphabetical order.

§ 382.3 What do the terms in this part mean?

* * * * *

PHMSA means the Pipeline and Hazardous Materials Safety Administration.

* * * * *

3. Revise § 382.5 to read as follows:

§ 382.5 To whom do the provisions of this part apply?

(a) If you are a U.S. air carrier, this part applies to you with respect to all your operations and aircraft, regardless of where your operations take place, except as otherwise indicated within this Part.

(b) If you are a foreign air carrier, this part applies to you with respect to flights that begin or end at a U.S. airport and to aircraft used for these flights, except as otherwise indicated within this Part. For purposes of this part, a “flight” means a continuous journey in the same aircraft or with one flight number that begins or ends at a U.S. airport. The following are some examples of the application of this term:

Example 1. A passenger books a nonstop flight from Paris to Chicago. This is a “flight” for purposes of this part.

Example 2. A passenger books a journey on a foreign carrier from Washington, DC, to Berlin. The foreign carrier flies nonstop to Frankfurt. The passenger gets off the plane in Frankfurt and boards a connecting flight, on the same or a different foreign carrier that goes to Berlin. The Washington-Frankfurt leg of the journey is a “flight” for purposes of this part; the Frankfurt-Berlin leg is not (unless it is a code-shared flight with a U.S. carrier; see paragraph (c) of this section).

Example 3. A passenger books a journey on a foreign carrier from New York to Cairo. The plane stops for refueling and a crew change in London. The passengers reboard the aircraft (or a different aircraft, assuming the flight number remains the same) and continue to Cairo. Both legs are parts of a

covered “flight” for purposes of this part, with respect to passengers who board the flight in New York.

Example 4. In Example 3, the carrier is not required to provide services under this part to a passenger who boards the aircraft in London and goes to Cairo. Likewise, on the return trip, the foreign carrier is not required to provide services under this part to a passenger who boards the aircraft in Cairo and whose journey ends in London.

Subpart I—Stowage of Wheelchairs, Other Mobility Aids, and Other Assistive Devices; Oxygen for Passengers

4. Revise the title of subpart I of part 382 to read as set forth above.

5. In subpart I of part 382, add §§ 382.133, 382.135, and 382.137, to read as follows:

§ 382.133 What are the requirements concerning the evaluation and use of passenger-owned electronic devices that assist passengers with respiration in the cabin during flight and that do not contain hazardous materials?

(a) Upon receiving a request from any manufacturer of a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator excepted from coverage under 14 CFR 121.574 or 135.91, or from an individual who desires to use such a device during a flight in air transportation, a U.S. air carrier that conducts passenger carrying service, other than an on-demand air taxi operator must:

(1) Make a one time determination as to whether the device is subject to 14 CFR 91.21, 121.306 or 135.144; and

(2) If the device is subject to 14 CFR 91.21, 121.306 or 135.144, conduct any necessary evaluation or testing to determine if under 14 CFR 91.21(b)(5), 121.306(b)(5) or 135.144(b)(5) such device will cause interference with the navigation or communication systems of each model of its aircraft irrespective of where aircraft is operated.

(b) Upon receiving a request from any manufacturer of a ventilator, respirator, continuous positive airway pressure machine, or portable oxygen concentrator whose use during flight is not restricted by a foreign government safety requirement, or from an individual who desires to use such a device during a flight in air transportation, a foreign air carrier that conducts passenger carrying service other than an on-demand air taxi operator must conduct any necessary evaluation or testing, consistent with applicable foreign safety regulations, to ascertain whether such device can be used safely by passengers with disabilities during a flight on each

model of its aircraft that it operates on flights to and from the United States.

(c) U.S. and foreign air carriers must complete the necessary evaluation or testing described in paragraphs (a) and (b) of this section, respectively, within 90 days after receiving a request from any manufacturer of devices listed in paragraphs (a) or (b) or from an individual who desires to use such a device during a flight in air transportation.

(d) Within 30 days after making the determinations described in paragraphs (a) through (c) of this section that a device may be operated safely during a flight, a carrier as defined in paragraphs (a) and (b) of this section must permit use of that model of device by passengers with disabilities aboard each aircraft model that it operates during those phases of flight in which the carrier has determined that the device may be safely used and consistent with applicable TSA, FAA, PHMSA, and foreign government safety regulations.

§ 382.135 What are the requirements concerning the provision of medical oxygen for passengers with disabilities?

Each U.S. and foreign air carrier operating to, from, and in the United States conducting passenger operations with at least one aircraft with a designed seating capacity of more than 60 passenger seats shall provide in-flight medical oxygen, upon request, to a passenger with a disability in accordance with 14 CFR 121.574 or 135.91, respectively, and consistent with any other applicable TSA, FAA, PHMSA and foreign government safety regulations. Carriers covered by this section have six months from the date of the issuance of the final rule to comply with the requirements of this section.

§ 382.137 May a carrier charge a passenger for costs related to the use of passenger-owned respiration assistive devices or the provision of carrier-supplied medical oxygen devices?

Carriers required to permit the use of respiratory assistive devices described in § 382.133 and to provide medical oxygen under § 382.135 may not charge a passenger for transportation, testing, inspection, maintenance or provision of a device described in § 382.133 or § 382.135 and that a passenger intends to use during flight. Prohibited charges include, but are not limited to, charges for medical oxygen supplied by the carrier, excess baggage charges, and charges for any transportation of a

device to or from a testing, inspection, or maintenance facility.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 38

[Docket No. RM05-30-000]

Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards

September 1, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005, which added a new section 215 to the Federal Power Act (FPA), the Commission is proposing to amend its regulations to incorporate:

(1) Criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (ERO) that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;

(2) Procedures governing enforcement actions by the ERO and the Commission;

(3) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

(4) Procedures for the establishment of Regional Advisory Bodies that may provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission;

(5) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(6) Regulations pertaining to the funding of the ERO.

DATES: Comments are due October 7, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the

Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and fourteen (14) copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

William Longenecker (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8570.

David Miller (Technical Information), Office of Markets, Tariffs and Rates, Division of Reliability, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6473. Jonathan First (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8529.

Christy Walsh (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6523.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. Pursuant to Subtitle A (Reliability Standards) of the Electricity Modernization Act of 2005,¹ which added a new section 215 to the Federal Power Act (FPA), the Commission is proposing to amend its regulations to incorporate:

(1) Criteria that an entity must satisfy in order to qualify to be the Electric Reliability Organization (ERO), which the Commission will certify as the organization that will propose and enforce Reliability Standards for the Bulk-Power System in the United States, subject to Commission approval;

(2) Procedures under which the ERO may propose new or modified Reliability Standards and procedures to enforce such standards, for Commission review;

(3) Procedures governing enforcement actions by the ERO and the Commission;

(4) Criteria under which the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards;

(5) Procedures for the establishment of Regional Advisory Bodies that may

provide advice to the Commission, the ERO or a Regional Entity on matters of governance, applicable Reliability Standards, the reasonableness of proposed fees within a region, and any other responsibilities requested by the Commission;

(6) Regulations governing the issuance of periodic reliability reports by the ERO that assess the reliability and adequacy of the Bulk-Power System in North America; and

(7) Regulations pertaining to the funding of the ERO.

II. Background

A. Commission Reliability Activity Prior to the Electricity Modernization Act of 2005

2. The Electricity Modernization Act of 2005 was enacted into law by President George W. Bush on August 8, 2005. Subtitle A of the Electricity Modernization Act amended the FPA by adding a new section 215, titled "Electric Reliability." Prior to enactment of section 215, the Commission had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid. In this regard, the Commission acted to promote a more reliable electric system by promoting regional coordination and planning of the interstate grid through regional independent system operators (ISOs) and regional transmission organizations (RTOs), adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements and assuring recovery of costs in wholesale transmission rates. Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate grid through the grant of new authority which provides for a system of mandatory Reliability Standards developed by the ERO and reviewed and approved by the Commission. The ERO can initiate an enforcement action and impose penalties for the violation of Reliability Standards, subject to Commission review; or the Commission can initiate its own enforcement action.

B. Voluntary Reliability Standards

3. In the aftermath of the 1965 blackout in the northeast United States, the electric industry established the North American Electric Reliability Council (NERC), a voluntary reliability organization. Since its inception, NERC has developed Operating Policies and Planning Standards that provide

¹H.R. 6, Title XII, Subtitle A, 109th Cong. (2005).

voluntary guidelines for operating and planning the North American bulk-power system. In April 2005, NERC adopted "Version 0" reliability standards that translated the NERC Operating Policies, Planning Standards and compliance requirements into a comprehensive set of measurable standards. While NERC has developed a compliance enforcement program to ensure compliance with the reliability standards it has developed, industry compliance is still voluntary and not subject to mandatory enforcement penalties. Although NERC's efforts have been important in maintaining the reliability of the nation's bulk-power system, NERC itself has recognized the need for mandatory, enforceable reliability standards and has been a proponent of legislation to establish a Commission-jurisdictional ERO that would propose and enforce mandatory reliability standards.

4. A common cause of the past three major regional blackouts was violation of NERC's then Operating Policies and Planning Standards. During July and August 1996, the west coast of the United States experienced two cascading blackouts caused by violations of voluntary Operating Policies.² In response to the outages, the Secretary of Energy convened a task force to advise the U.S. Department of Energy (DOE) on issues needed to be addressed to maintain the reliability of the bulk-power system. In a September 1998 report, the task force recommended, among other things, that federal legislation should grant more explicit authority for the Commission to approve and oversee an organization having responsibility for bulk-power reliability standards.³ Further, the task force recommended that such legislation provide for Commission jurisdiction for reliability of the bulk-power system and Commission implementation of mandatory, enforceable reliability standards.

5. On August 14, 2003, a blackout affected significant portions of the Midwest and Northeast United States, and Ontario, Canada. This blackout affected an area with an estimated 50 million people and 61,800 megawatts of

electric load. A joint U.S.-Canada task force studied the causes of the August 14, 2003 blackout and determined that several entities violated NERC's then Operating Policies and Planning Standards, and those violations directly contributed to the start of the blackout.⁴ The joint task force, in its recommendations to prevent or minimize the scope of future blackouts, identified the need for legislation to make reliability standards mandatory and enforceable, with penalties for non-compliance.⁵

6. In the wake of the August 14, 2003 blackout, the Commission has taken a more direct and pro-active role in transmission reliability matters. Commission staff helped to lead and conduct the joint U.S.-Canada investigation of the August 2003 blackout. In April 2004, the Commission issued a Reliability Policy Statement,⁶ which clarified its power grid reliability policies and objectives, and completed several Commission-designated recommendations of the 2003 Task Force.

7. Also, as part of the Commission's efforts to promote grid reliability, the Commission has created a new Division of Reliability within the Office of Markets, Tariffs and Rates. One task of this new division has been to participate in NERC's Reliability Readiness Reviews of balancing authorities, transmission operators and reliability coordinators in North America to determine their readiness to maintain safe and reliable operations. The Commission also directed transmission owners to report, by June 2004, on the vegetation management practices they use for transmission lines and rights-of-way.⁷ The Commission's Reliability Division has also engaged in studies and other activities to assess the longer-term and strategic needs and issues related to power grid reliability. The Commission

⁴ The joint team, known as the U.S.-Canada Power System Outage Task Force, issued a *Final Report on the August 14, 2003 Blackout In the United States and Canada: Causes and Recommendations (Final Blackout Report)* on April 5, 2004, which presented an in-depth analysis of the causes of the blackout and recommendations for avoiding future blackouts.

⁵ *Final Blackout Report*, at 140-42.

⁶ *Policy Statement on Matters Related to Bulk Power System Reliability*, 107 FERC ¶ 61,052, order on clarification, 108 FERC ¶ 61,288 (2004).

⁷ *Reporting By Transmission Providers on Vegetation Management Practices Related To Designated Transmission Facilities*, 107 FERC ¶ 61,053 (2004). This order was issued pursuant to FPA section 311, which authorizes the Commission to secure information necessary or appropriate as a basis for recommending legislation. The Commission submitted a report to Congress in September 2004 that set forth the Commission's findings and recommendations, including the need for mandatory, enforceable reliability rules.

has held several workshops and technical conferences to address reliability issues including transition to the NERC reliability standards, operator tools, and reactive power.

8. Stakeholders in the electric utility industry have also participated in dialogues on the international implications of the ERO and Cross-Border Regional Entities during three public bilateral workshops held in the United States and Canada. On August 9, 2005, the Federal-Provincial-Territorial (FPT) Working Group in Canada and DOE jointly submitted to the Commission "Principles for an Electric Reliability Organization that Can Function on an International Basis" (bilateral principles) based on these stakeholder dialogues.⁸ A number of bilateral principles are incorporated into the NOPR, and the Commission asks questions and seeks comment on the bilateral principles. In this regard, we note that the Commission's proposed rule would allow the approved ERO or a Cross-Border Regional Entity to take appropriate steps to be recognized in Mexico or Canada as embedded in the principles. For example, in accordance with section 215(c)(2)(E) of the FPA, we expect the ERO and any Regional Entities to take such steps as relevant Mexican and Canadian authorities may require to have standing in those nations.⁹

C. Electric Reliability Legislation

9. Electric reliability legislation was first proposed after issuance of the September 1998 task force report,¹⁰ and was a common feature of comprehensive electricity bills since that time. A stand-alone electric reliability bill was passed by the Senate unanimously in 2000.¹¹ In 2001, President Bush proposed making electric Reliability Standards mandatory and enforceable as part of the National Energy Policy.¹² On August 8, 2005, the Electricity Modernization Act of 2005

⁸ A copy of these principles has been placed in the public record of this docket. We invite comments on these principles.

⁹ In addition, this proposed rule is consistent with many of the other bilateral principles, such as the requirement for the independence of the ERO's board; the requirement that all owners, users and operators of the bulk-power system must comply with approved reliability standards; and a number of the suggested Enforcement Principles. Also, the fact that the statute does not authorize the U.S. Government to appoint members to the ERO's board is consistent with the bilateral principles. Similarly, we propose to preclude Commission officials from serving on the board.

¹⁰ See *supra* n. 3.

¹¹ S. 2071, 106th Cong. (2000). An identical bill, H.R. 4881, was not voted on by the House of Representatives.

¹² *Report of the National Energy Policy Development Group*, May 2001, at p. 7-6.

² *The Electric Power Outages in the Western United States*, July 2-3, 1996, at 76 (ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/doerept.pdf) and *WSCC Disturbance Report, For the Power System Outage that Occurred on the Western Interconnection August 10, 1996*, at 4 (ftp://www.nerc.com/pub/sys/all_updl/docs/pubs/AUG10FIN.pdf).

³ *Maintaining Reliability in a Competitive U.S. Electricity Industry, Final Report of the Task Force on Electric System Reliability*, Secretary of Energy Advisory Board, U.S. Department of Energy (September 1998), at 25-27, 65-67.

was enacted into law by President Bush. This important new energy legislation adds to the FPA a new provision which buttresses the Commission's efforts to strengthen the reliability of the interstate transmission grid. Specifically, the new section 215 of the FPA provides for a system of mandatory, enforceable Reliability Standards. Reliability Standards are to be developed by the ERO, subject to Commission review and approval; and, once approved, standards may be enforced by the ERO, subject to the Commission's review.

10. The statute directs the Commission to issue a final rule to implement the requirements of section 215 no later than 180 days after enactment, or by February 5, 2006. Below, we summarize the provisions of Subtitle A of the Electricity Modernization Act of 2005:

11. Section 215(a) defines relevant terms used in the Act.

12. Section 215(b) (Jurisdiction and Applicability) provides that, for purposes of approving Reliability Standards and enforcing compliance with such standards, the Commission shall have jurisdiction over the certified ERO, any Regional Entities, and all users, owners and operators of the bulk-power system, including but not limited to the public and governmental entities described in section 201(f) of the FPA.¹³ Section 215(b)(2) requires the Commission to issue a final rule to implement the requirements of the section no later than 180 days after the date of enactment.

13. Section 215(c) (Certification) authorizes the Commission to certify a person as an ERO, provided that the applicant meets specified criteria.

14. Section 215(d) (Reliability Standards) provides the process for the ERO to propose Reliability Standards, subject to Commission review and approval. This subsection also directs the Commission to adopt rules to provide fair processes for the identification and timely resolution of any conflict between a Reliability Standard and any function, rule, order,

tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a transmission organization.

15. Section 215(e) (Enforcement) authorizes the ERO, after notice and opportunity for hearing, to impose a penalty for a violation of a Reliability Standard; subject to review by the Commission. This section also provides for enforcement initiated by the Commission on its own motion. This subsection also requires that the Commission issue regulations under which the ERO will be authorized to enter into an agreement to delegate authority to a qualified Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing such standards. Further, section 215(e) requires that any penalty imposed shall bear a reasonable relation to the seriousness of the violation and take into consideration timely remedial efforts.

16. Section 215(f) (Changes In Electric Reliability Organization Rules) requires Commission approval of any proposed ERO rule or proposed rule change.

17. Section 215(g) (Reliability Reports) requires that the ERO conduct periodic assessments of the reliability and adequacy of the North American bulk-power system.

18. Section 215(h) (Coordination With Canada and Mexico) urges the President to negotiate international agreements with the governments of Canada and Mexico to provide for effective compliance with Reliability Standards and the effectiveness of the ERO in the United States and Canada or Mexico.

19. Section 215(i) (Savings Provisions) states that the ERO shall have authority to develop and enforce compliance with Reliability Standards for only the bulk-power system and makes clear that section 215 of the FPA shall not be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any Reliability Standard.

20. Section 215(j) (Regional Advisory Bodies) requires the Commission to establish Regional Advisory Bodies upon petition of at least 2/3 of the states within a region that have more than 1/2 of their electric load served within the region; such Regional Advisory Bodies may provide advice to the ERO, a Regional Entity, or the Commission.

21. Section 215(k) (Application to Alaska and Hawaii) provides that section 215 of the FPA does not apply to Alaska or Hawaii.

22. Subtitle A of the Electricity Modernization Act of 2005 also includes

two reliability-related provisions that are not part of new section 215 of the FPA. First, section 1211(b) of the Act provides that the ERO certified by the Commission as well as Regional Entities are not departments, agencies or instrumentalities of the United States Government. Second, section 1211(c) provides that federal agencies responsible for approving access to electric transmission or distribution facilities located on lands within the United States shall, in accordance with applicable law, expedite any federal agency approvals that are necessary to allow the owners or operators of such facilities to comply with a Commission-approved Reliability Standard that pertains to vegetation management, electric service restoration, or resolution of situations that imminently endanger the reliability or safety of the facilities.

III. Discussion

A. The Commission's Reliability Proposal

23. The Commission's proposed reliability regulation is entitled, *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*. The proposed regulation is generally limited to developing and implementing the processes and procedures that section 215 of the FPA directs the Commission to develop and undertake with regard to the formation and functions of the ERO and Regional Entities. Section 215(b) obligates all users, owners and operators of the bulk-power system to comply with Reliability Standards that become effective pursuant to the processes set forth in the statute. The complete text of the proposed rule is provided in the Attachment to this notice of proposed rulemaking (NOPR).

24. The proposed regulation is organized into twelve sections: Section 38.1—Definitions; Section 38.2—Jurisdiction and Applicability; Section 38.3—Electric Reliability Organization Certification; Section 38.4—Approval of Reliability Standards; Section 38.5—Enforcement of Reliability Standards; Section 38.6—Enforcement of Commission Rules and Orders; Section 38.7—Delegation of Certain Electric Reliability Organization Authority to Regional Entities; Section 38.8—Changes in Electric Reliability Organization Rules and Regional Entity Rules; Section 38.9—Process for Resolution of Conflicts With a Reliability Standard;

¹³ Section 201(f) of the FPA, 16 U.S.C. 824(f), as modified by Subtitle H, section 1291(c) of the Energy Policy Act of 2005, states that "[n]o provision in this Part shall apply to, or be deemed to include, the United States, a state or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto."

Section 38.10—Procedures for Establishment and Recognition of Regional Advisory Bodies;
 Section 38.11—Reliability Reports;
 Section 38.12—Review of State Action, and
 Section 38.13—Funding of the Electric Reliability Organization.

B. Summary of the Commission's Reliability Rule Proposal

1. Definitions—Section 38.1

25. Section 38.1 of the proposed regulations defines relevant terms used in the Act. Each definition is based on a corresponding definition contained in section 215 of the FPA, except as otherwise noted.

26. The term “Bulk-Power System” means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

27. The term “Cross-Border Regional Entity” means a Regional Entity for which the size and scope includes a portion of Canada or Mexico.

28. The term “Cybersecurity Incident” means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

29. The term “Electric Reliability Organization” or “ERO” means the organization certified by the Commission the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

30. The legislation distinguishes between the terms “Reliability Standards” and “rules.” The former refers to Commission-approved, substantive standards that provide for Reliable Operation of the Bulk-Power System. In contrast, “rules” refer to the internal procedures of the ERO or any particular Regional Entity. Accordingly, to maintain this distinction, the Commission proposes the following definition of the term “ERO Rules” for purposes of this NOPR: the bylaws, rules of procedure and other organizational rules and protocols of the ERO. The Commission proposes to define the term “Regional Entity Rules” as the bylaws, rules of procedure and other organizational rules and protocols of a Regional Entity.

31. The term “Interconnection” means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control.

32. The term “Regional Advisory Body” is used in the statute but not defined. For purposes of our regulations, the Commission proposes to define the term as follows: an entity established upon petition to the Commission pursuant to section 215(j) of the FPA that is organized to advise the ERO, a Regional Entity, or the Commission regarding certain reliability-related matters in accordance with section 38.9 of the proposed regulation.

33. The term “Regional Entity” means an entity having enforcement authority pursuant to section 38.6 of the proposed regulation.

34. The term “Reliable Operation” means operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a Cybersecurity Incident, or unanticipated failure of system elements.

35. The term “Reliability Standard” means a requirement, approved by the Commission under the instant proposed regulation, to provide for Reliable Operation of the Bulk-Power System. The term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System. The term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

36. The term “Transmission Organization” means an RTO, ISO, independent transmission provider, or other Transmission Organization finally approved by the Commission for the operation of transmission facilities.

2. Jurisdiction and Applicability—Section 38.2

37. Proposed regulation section 38.2 provides for Commission jurisdiction over the ERO, any Regional Entities, and all users, owners and operators of the Bulk-Power System within the United

States (other than Alaska and Hawaii) including, but not limited to, the entities described in section 201(f) of the FPA, for the purposes of approving and enforcing Reliability Standards established by the Commission in accordance with this new regulation.

3. Electric Reliability Organization Certification—Section 38.3

38. Proposed regulation section 38.3 provides that any person may submit an application to the Commission for certification as the ERO within sixty (60) days following the issuance of a new final regulation. This provision provides for the Commission to certify one applicant as the ERO, if the Commission determines such applicant meets certain criteria. Paragraph (b)(1) of proposed section 38.3 provides that the applicant must demonstrate that it has the ability to develop and enforce Reliability Standards that provide for an adequate level of reliability of the Bulk-Power System.

39. The Commission interprets section 215 of the FPA to mean that an ERO certified by the Commission shall comply with the certification criteria on an ongoing basis, and that a violation of the certification criteria constitutes a violation of the FPA. Accordingly, as discussed below with respect to section 38.6(a) and (b), the Commission will conduct periodic compliance audits and, if it finds a violation of the ERO certification criteria, the Commission may suspend the ERO's certification or decertify the ERO and solicit new applications for ERO certification.

40. Section 38.3(b)(2) provides that the applicant must document that it has established rules that assure its independence of the users, owners and operators of the Bulk-Power System while assuring stakeholder representation in the selection of its directors and balanced decisionmaking in any ERO committee or subordinate organizational structure. Pursuant to section 215(c)(2)(B) of the FPA, section 38.3(b)(2) also provides that such ERO rules allocate equitably reasonable dues, fees and charges among end users for all activities under this new reliability regulation. Section 38.3(b)(2) further provides that such ERO rules are to be fair and impartial procedures for enforcement of Reliability Standards through the imposition of penalties, including limitations on activities, functions or operations, or other appropriate sanctions.

41. In addition, section 38.3(b)(2) provides that such ERO rules are to provide for reasonable notice and opportunity for public comment, due process, openness, and balance of

interests in developing Reliability Standards, and otherwise exercising its duties. Paragraph (b)(2) of proposed section 38.3 provides that such ERO rules must include appropriate steps, after certification by the Commission as the ERO, to gain recognition in Canada and Mexico.

42. Paragraph (c) of section 38.3 requires an ERO certified by the Commission to periodically submit to the Commission an application to be recertified as the ERO. We seek comments on what would constitute a reasonable length of time for such periodic certification to be effective. For example, is a five-year certification period appropriate? How far in advance should an ERO be required to submit its application for recertification before its current certification period expires?

43. In addition to seeking comment on the above proposal, we seek comments on whether the term “end users” should be defined for purposes of the ERO’s equitable allocation of reasonable dues, fees and charges among end users? Should “end users” be defined as customers using net energy for load? Should the term “end users” be defined in terms of those who directly or indirectly use the transmission system since “Bulk-Power System” is defined to exclude facilities used in local distribution of electric energy? Should “end users” be limited to entities transmitting electricity through the transmission facilities of others? Or, might “end users” include the transmission facility owners and operators whose businesses depend on the reliable operations of the interconnected Bulk-Power System?

4. Approval of Reliability Standards—Section 38.4

44. Paragraph (a) of proposed regulation section 38.4 provides that the ERO must consider and develop Reliability Standards and modifications to be applicable to the entire Bulk-Power System or a particular region or Interconnection. The ERO shall file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective under this section with the Commission. The ERO’s filing shall state the purpose of the standard and a summary of its development.

45. Section 215(d)(2) of the FPA requires that the Commission give due weight to the technical expertise of the ERO with respect to the content of a proposed Reliability Standard or modification to a Reliability Standard. Likewise, the statute requires that the Commission give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide

basis with respect to a Reliability Standard to be applicable within that Interconnection. Further, section 215(d)(3) of the FPA provides for a rebuttable presumption that a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.

46. The statute, however, is silent regarding deference to Regional Entities not organized on an Interconnection-wide basis. Accordingly, the Commission interprets sections 215(d)(2) and (3) as not requiring the Commission to give due weight to the technical determinations of Regional Entities not organized on an Interconnection-wide basis or creating a presumption with regard to the reasonableness of any Reliability Standard proposed by such Regional Entities for consideration by the ERO. In addition, the Commission expects a greater level of uniformity among Reliability Standards approved for Regional Entities not organized on an Interconnection-wide basis.

47. Paragraph (b) provides that that the Commission may approve by rule or order a proposed Reliability Standard or a modification to a Reliability Standard if it determines that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest. The Commission generally anticipates that it will provide notice and opportunity for hearing of any proposed Reliability Standard or a modification to a Reliability Standard. The Commission shall give due weight to the technical expertise of the ERO with respect to the content of a proposed Reliability Standard or modification to a Reliability Standard and give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a Reliability Standard to be applicable within that Interconnection.

48. Proposed Section 38.4(b)(3) provides that the Commission will not defer to the ERO or a Regional Entity with respect to the effect of a Reliability Standard or modification to a Reliability Standard on competition. How should the Commission define “competition” in this context? Commenters are asked to provide examples regarding the effect of a Reliability Standard on competition.

49. Paragraph (c) provides that an approved Reliability Standard or a modification to a Reliability Standard shall take effect as approved by the

Commission. Paragraph (d) provides that the ERO shall rebuttably presume that a proposal from a Regional Entity organized on an Interconnection-wide basis for a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.

50. Consistent with section 215(d)(4) of the FPA, paragraph (e) of proposed regulation section 38.4 provides that the Commission shall remand to the ERO for further consideration a proposed Reliability Standard or modification to a Reliability Standard that the Commission disapproves in whole or part.

51. Paragraph (f) provides that the Commission may, upon its own motion or a complaint, order the ERO to submit a proposed Reliability Standard or modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the FPA.

52. Paragraph (g) provides that the Commission may, upon its own motion or complaint, review a previously-approved Reliability Standard. If, after notice and opportunity for hearing, the Commission determines that the Reliability Standard, or any provision of the Reliability Standard, no longer meets the statutory (and regulatory) standard for approval of Reliability Standards, *i.e.*, it is found to be unjust or unreasonable, unduly discriminatory or preferential, or not in the public interest, the Commission may remand it to the ERO or the relevant Regional Entity. The statute allows us to order the ERO to submit a modification to a Reliability Standard, and we construe this authority as allowing a remand of a previously-approved Reliability Standard.

53. Because the Commission’s options are limited by FPA section 215 to either accepting or remanding a proposed Reliability Standard, the Commission is concerned that, while a circumstance may arise where it is necessary to remand a proposed Reliability Standard to the ERO, this may result in a period of time in which there is no mandatory, enforceable standard in place for a particular area of bulk system reliability. Accordingly, to minimize this possibility, paragraph (h) provides that the Commission, when remanding a Reliability Standard, may state a deadline by which the ERO must

resubmit the proposed Reliability Standard with revisions that address the reasons for the remand. Failure to meet such a deadline would constitute a violation of the FPA.

54. In addition to seeking comment on the above proposal, the Commission seeks comment on whether the Commission has authority to void a previously-accepted Reliability Standard. If the Commission has such authority, is it beneficial to have such a provision in the Commission's regulations?

55. Section 215(d) of the FPA and proposed regulation section 38.4 provide that the Commission may approve a proposed Reliability Standard or modification to a proposed Reliability Standard if it determines that the standard is "just, reasonable, not unduly discriminatory or preferential, and in the public interest." The Commission seeks comment on how this standard should be applied in the context of reviewing proposed Reliability Standards.

56. We note that the bilateral principles specify that membership in the ERO should not be a condition for participation in the ERO's reliability development process. We seek comments on whether membership in the ERO or a Regional Entity should not be a condition for participation in the ERO's or a Regional Entity's standards development processes.

57. The Commission notes that the bilateral principles include a provision that if a standard is remanded by a regulatory authority, the ERO should notify all relevant regulatory authorities and should work to ensure that all concerns of such regulatory authorities are addressed prior to resubmission of the standard to the Commission and authorities in Canada. (1) Should the proposed rule specify this process? (2) What are the implications of the remand by a Canadian authority of a Reliability Standard that has been approved by the Commission? Also, should the ERO certification criteria specify that the number of board members representing each participating country in the ERO, and the opportunities for each country to have an equitable number of members on all committees, must be in rough proportion to total load?

5. Enforcement of Reliability Standards—Section 38.5

58. Paragraph (a) of proposed regulation section 38.5 provides that the ERO or a Regional Entity meeting the requirements of section 215(e)(4)(A), (B) and (C) may impose, subject to paragraph (d), a penalty on a user, owner or operator of the Bulk-Power

System for a violation of a Reliability Standard approved by the Commission if the ERO or the Regional Entity, after notice and opportunity for hearing, finds that the user, owner or operator has violated a Reliability Standard approved by the Commission and files notice and the record of the ERO's or the Regional Entity's proceeding with the Commission.

59. Paragraph (b) provides that a Regional Entity shall file notice with the ERO of any enforcement action it takes. Paragraph (c) provides that any notice of an enforcement action, whether by the ERO or a Regional Entity, shall consist of the name of the entity against whom the action was taken, and include statements describing the enforcement action and findings of fact with respect to the act or practice that led to the enforcement action, the sanction imposed, the record of the proceeding and other relevant matters.

60. Paragraph (d) provides that a penalty imposed under paragraph (a) may take effect not earlier than the thirty-first (31st) day after the ERO files with the Commission notice of penalty and the record of the proceedings. Such penalty shall be subject to review by the Commission, either on its own motion or upon application by the user, owner or operator of the Bulk-Power System that is the subject of the penalty filed within thirty (30) days after the date such notice is filed with Commission. If the review process is not initiated during the 30-day period, the enforcement action will be confirmed by operation of law.

61. Paragraph (d) also provides that an application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty. In any proceeding to review a penalty imposed under paragraph (a), the Commission, after notice and opportunity for hearing (which hearing may consist solely of the record before the ERO and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside or modify the penalty and, if appropriate, remand to the ERO for further proceedings.

62. Section 215(e) of the FPA as well as proposed section 38.5 of our regulations regarding enforcement of Reliability Standards provides for public notice and opportunity for a hearing with respect to both the ERO (or Regional Entity) enforcement proceedings and proceedings before the

Commission involving review of a proposed penalty. Paragraph (d)(8) of proposed section 38.5 would provide a limited exception to this notice requirement and allow non-public proceedings for enforcement actions that involve a Cybersecurity Incident, unless the Commission determines on a case-by-case basis that such protection is not necessary. The Commission has in place procedures to prevent the disclosure of sensitive information, such as the use of protective orders and rules establishing critical energy infrastructure information (CEII). However, the Commission believes that the specific, limited area of Cybersecurity Incidents requires additional protections because it is possible that system security and reliability would be further jeopardized by the public dissemination of information involving incidents that compromise the cybersecurity system of a specific user, owner or operator of the Bulk-Power System. The specific user, owner or operator would be notified of the enforcement action and provided an opportunity for a hearing. The Commission believes that this will provide acceptable due process to the specific owner, user or operator while preventing a further compromise in reliability.

63. The Commission seeks comment on this proposal and, in addition, seeks comment on (1) whether the proposal provides sufficient due process and (2) the identification of other specific events that should be subject to non-public hearing procedures.

64. Further, section 215(e)(2) of the FPA directs the Commission to implement expedited hearing procedures for the review of penalties imposed by the ERO or Regional Entities. Accordingly, paragraph (d), subparagraphs (5) through (7), set forth expedited procedures for Commission review of penalties.

65. Paragraph (e) of proposed regulation section 38.5 provides that, on its own motion or upon complaint, the Commission may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System, if the Commission finds, after notice and opportunity for hearing, that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

66. Paragraph (f) provides that any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into

consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner. The Commission believes that the imposition of penalties should not be limited to monetary penalties and may include limitations on activities, functions, operations, or other appropriate sanctions, including the establishment of a publicly available reliability watch list composed of major violators. Monetary penalties shall be paid in a timely manner. The Commission may also consider intensive compliance audits for entities that have a high incidence of violations or whose violations are serious or the installation of Commission staff onsite to monitor entities that have a high incidence of violations or whose violations are particularly serious.

67. In order that the Commission is able to perform its oversight function with regard to Reliability Standards that are proposed by the ERO and established by the Commission, it is essential that the Commission receive timely information regarding all potential violations of Reliability Standards. While section 215 of the FPA contemplates the filing of the record of an ERO or Regional Entity enforcement action, the Commission needs information regarding violations and potential violations at or near the time of occurrence. Accordingly, paragraph (g) of proposed section 38.5 requires that the ERO and all Regional Entities have in place procedures to notify the Commission of all violations and potential violations of Reliability Standards when the ERO or Regional Entity first notifies the user, owner or operator of the violation or potential violation. Such procedures must be submitted to the Commission within an application for certification as the ERO or an agreement to delegate authority to a Regional Entity. The Commission intends that notices of violations and potential violations will be filed electronically. All such reports of violations and potential violations shall include the entity's name, when the violation or potential violation occurred, what standard was violated or potentially violated, and the name of a person knowledgeable about the violation or potential violation to serve as a point of contact to provide the Commission with further details on the matter, as they develop, on an ongoing basis. The Commission will provide more details on the format of such electronic filings in the final rule.

Enforcement and Penalty Questions for Public Comment

68. In addition to comment on the above proposed rules, the Commission seeks comment on a number of enforcement and penalty issues. The ERO's and Regional Entities' enforcement role under new section 215 of the FPA is similar in some ways to the enforcement roles of existing self-regulatory organizations (SROs). For example, the National Association of Securities Dealers (NASD) and the National Futures Association (NFA), and securities and commodities exchanges, such as the New York Stock Exchange (NYSE), New York Mercantile Exchange (NYMEX), and the Chicago Board of Trade (CBOT), are SROs in the securities and commodities industries that are experienced in the enforcement of standards, assessment of penalties, and have penalty appeal processes, as summarized below.

69. In general terms, individuals or firms doing securities business with the American public must register with NASD. Similarly, all persons and organizations that intend to do business as futures professionals must register with the NFA under the Commodity Exchange Act. The National Adjudicatory Council (NAC), the adjudicatory body of the NASD, has established the NASD Sanction Guidelines that provide direction for adjudicators in imposing sanctions consistently and fairly.¹⁴ The Sanction Guidelines also provide for non-monetary sanctions including: suspensions, bars, and expulsions. The NFA Compliance Rules also provide for both monetary and non-monetary sanctions, which may be imposed at the conclusion of a disciplinary hearing or appeal.¹⁵

70. The NYSE, NYMEX, NASD, and the CBOT all have internal disciplinary procedures and rules, including the right to appeal a disciplinary decision.¹⁶

¹⁴ Depending on the violation, the Sanction Guidelines provide for monetary sanctions up to \$100,000, and in certain egregious cases, the NASD may consider a monetary sanction in excess of \$100,000. Schedule A to the Sanction Guidelines specifies that violations are generally not subject to non-monetary sanctions when monetary sanctions of \$5,000 or less are imposed.

¹⁵ The NFA Compliance rules provide for monetary fines not to exceed \$250,000 per violation and the following non-monetary penalties: expulsion or suspension for a specified period from NFA membership; bar or suspension for a specified period from association with an NFA Member; censure or reprimand; order to cease and desist; and any other fitting penalty or remedial action not inconsistent with the NFA Compliance rules.

¹⁶ See NASD Rule 9311: Appeal by Any Party; NYSE Rule 476: Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Allied Members, Approved Persons, Employees, or

Following a plenary disciplinary proceeding, the appellate processes at the above-mentioned SROs are largely the same. First, the respondent files a notice of appeal to the SRO within a specified time which stays any penalty imposed pending the outcome of the appellate review. Second the matter goes before an appellate committee of the SRO comprised of at least two disinterested parties who evaluate the decision, evidence and penalty. Third, the appellate committee renders its decision in writing. With the exception of the CBOT, this decision is the final determination of the SRO.¹⁷ Fourth, the respondent may appeal the decision of the appellate committee (the Board of Directors in the case of CBOT) to the relevant federal regulatory body. The notice of appeal to the relevant regulatory body does not act as a stay of the complained of determination made by the self-regulatory organization unless the regulatory body otherwise orders. Finally, following a review by the relevant federal regulatory body, the respondent may pursue an appeal in the U.S. Courts of Appeals.

71. With the above discussion in mind, the Commission invites public comment on the following questions regarding penalties or sanctions for violations of reliability rules:

(1) What is the appropriate appeals process, if any, of an ERO or Regional Entity decision to impose a penalty? Would it be appropriate for the ERO or a Regional Entity with delegated enforcement authority to adopt enforcement, penalty and appeals processes similar to the SRO processes discussed above? Should appeals within the ERO be allowed before appeal to the Commission; should appeal of a penalty imposed by a Regional Entity be taken through the Regional Entity itself, with further appeal to the Commission; or should the appeal be through the ERO in the first instance, then to the Commission?

(2) Should the Commission approve a penalty range or guidelines before the ERO can levy any penalty or sanction for violations, and, if so, should the penalty range or guidelines for a violation be submitted for Commission approval at the same time that the corresponding Reliability Standard is submitted to the Commission for approval?

Others; NYMEX, NYMEX.com: Exchange Rule Book, Rule 8.13 Appeals; CBOT, Rules & Regulations: Chapter 5 Disciplinary Proceedings, 540.05 Appeals from a Decision of a Disciplinary Committee.

¹⁷ A CBOT appellate committee's decision can be appealed to the CBOT's Board of Directors.

(3) Should a single monetary penalty be prescribed for a violation of a particular standard or should a schedule of monetary penalties be prescribed from which to select at the time of an infraction depending upon relevant circumstances such as the number of repeat offenses or length of time before adequate corrections are made to bring the violator into compliance?

(4) The Commission interprets section 316A of the FPA, as amended by Congress in the Electricity Modernization Act of 2005, as establishing limits on monetary penalties for violation of Reliability Standards that may be imposed by the ERO, Regional Entities and the Commission. The Commission seeks comment on this interpretation.

(5) Paragraph (d)(1) of proposed section 38.5 provides that the Commission will review a penalty on its own motion, or upon application of the entity that is the subject of the penalty. Should the Commission determine by rulemaking that certain categories of penalties should be automatically subject to Commission review? For example, should penalties above a certain dollar threshold automatically require Commission review?

(6) What types of nonmonetary penalties, if any, are appropriate?

(7) Who should receive, and what should be done with monies collected as monetary penalties? Should the monetary penalties collected by the ERO or Regional Entity be used to defray the cost of its enforcement program, or allocated to some other use? Would allowing the ERO or Regional Entity to use penalty money to fund an enforcement program create an appearance of impropriety?

(8) The Commission notes that the bilateral principles include a provision calling for rigorous audits by the ERO and Regional Entities to ensure the capability to comply with and actual compliance with the Reliability Standards. The bilateral principles also provide for the ERO to take steps to ensure that auditors are properly trained and that the same audit standards apply to all audits conducted by the ERO and Regional Entities. Should the proposed rule specify these audits requirements as part of the ERO certification requirements and the Regional Entity certification and delegation requirements?

(9) The Commission notes that the bilateral principles provide that RTOs and ISOs should not become Regional Entities, and that the Regional Entities should be distinct from the operators of the system, such as RTOs and ISOs. Should the proposed rule mandate this?

What are the enforcement implications of an RTO or ISO that is a Regional Entity? Are there ways for an RTO or ISO to adequately separate its enforcement function from its ownership, use or operation of the Bulk-Power System to fully ensure the independence of the enforcement unit? What process should such an enforcement unit follow to insulate itself from its RTO or ISO organization so that it may undertake any enforcement actions that become necessary against the RTO or ISO? How would this comport with the requirements of section 215 of the FPA?

(10) Paragraph (e) of proposed section 38.5 states that the Commission may order compliance with a Reliability Standard and may impose a penalty if the Commission finds that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard. Should the Commission clarify in the rule that, in a situation where an entity is about to engage in an act that will constitute a violation of a Reliability Standard, Commission action will be in the form of a compliance order with the goal of preventing the violation from occurring; and further clarify that an entity that has engaged in an actual violation may be subject to both penalties and a compliance order? Are there situations that may warrant penalties where an entity is about to engage in activity that would violate a Reliability Standard but the activity was ultimately averted?

(11) Paragraph (g) of proposed section 38.5 requires that the ERO and all Regional Entities have in place procedures to notify the Commission of all violations and potential violations of Reliability Standards when the ERO or Regional Entity first notifies the user, owner or operator of the violation or potential violation. We seek comment on what confidentiality protections may be needed, particularly with regard to potential violations. For example, the Commission currently maintains confidential protection of other types of enforcement-related investigations pursuant to section 1b or our regulations, 18 CFR 1b (2005). Are similar protections needed here?

72. The Commission recognizes that the Nuclear Regulatory Commission (NRC) has developed a nuclear power plant assessment program to enable it to arrive at objective conclusions about a licensee's safety performance. The NRC's assessments of plant performance are based on inspections, as well as analysis of certain performance indicators reported by the licensees.

With this information, the NRC assigns each plant to one of five categories in an Action Matrix. A plant's position in the Action Matrix determines the NRC's response, which may include actions ranging from performing supplemental inspections, to meeting with management, to ordering a plant to be shut down. A summary of the Action Matrix is posted on the NRC website and is updated quarterly. In addition, the NRC communicates its assessment of plant performance in letters to licensees, typically semi-annually. These letters are also posted on the NRC's website. The Commission seeks comment on the feasibility and appropriateness of adopting a reliability assessment program similar to the NRC's nuclear power plant assessment program. Also, should the Commission establish a reliability watch list modeled on the NRC's Action Matrix? What features of the NRC program should the Commission adopt? What other features might be added?

73. The Commission also recognizes that the nuclear electric utility industry has formed the Institute of Nuclear Power Operations (INPO). The INPO is a technical organization whose mission is to promote the highest levels of safety and reliability—to promote excellence—in the operation of nuclear electric generating plants.¹⁸ All U.S. utilities that operate commercial nuclear power plants are members of the INPO. The INPO complements the regulatory role of the NRC by providing a technical forum for the industry to collectively ensure reliable and safe nuclear operations. The INPO's programs include an information sharing network, an equipment failure database, a national academy for nuclear training, events analysis, accreditation, operations evaluations, and monitoring of performance indicators. The Commission asks commenters to discuss which aspects of the INPO's programs would serve as useful models for the ERO. What lessons can be drawn from INPO's complementary role with the NRC?

6. Enforcement of Commission Rules and Orders—Section 38.6

74. Paragraph (a) of section 38.6 provides that the Commission may take such action as is necessary and appropriate against the ERO or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the ERO or a Regional Entity. The first clause of this provision tracks section 215(e)(5) of the FPA. In addition, paragraph (a) states

¹⁸ See <http://www.eh.doe.gov/inpo/>.

that the possible remedial action taken pursuant to this provision includes, but is not limited to, suspension or rescission of the ERO's certification or a Regional Entity's delegation of authority, and violations of the FPA may mean possible imposition of civil penalties. Entities will be provided notice and opportunity for comment before the Commission takes such remedial action.

75. Paragraph (b) of proposed section 38.6 provides that the Commission will periodically audit and review the ERO's and Regional Entities' compliance with the statutory and regulatory criteria for certification and delegation of functions, respectively.

76. What mechanism of review and methods of oversight should be used to assure the Commission that the ERO or a Regional Entity is meeting its responsibilities for monitoring compliance with the Reliability Standards?

77. With respect to any monetary penalties levied directly by the Commission against the ERO or a Regional Entity for violation of the FPA, should the ERO or a Regional Entity be able to recover such penalties through dues, fees, or other charges?

78. Section 215(e)(5) of the FPA provides that, "[t]he Commission may take such action as is necessary or appropriate against the ERO or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the ERO or Regional Entity." Since the ERO and Regional Entity provisions of the Electricity Modernization Act of 2005 are modeled on the SRO provisions of the securities law, and under those provisions, the Securities and Exchange Commission can impose monetary and nonmonetary penalties on SRO board members, should the Commission adopt the same approach with respect to the board members of the ERO and Regional Entities?

7. Delegation of Certain Electric Reliability Organization Authority to Regional Entities—Section 38.7

79. Paragraph (a) of proposed regulation section 38.7 provides that the ERO may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the ERO and enforcing Reliability Standards under section 38.5. Paragraph (b) provides that a delegation agreement shall not be effective until it is approved by the Commission. Paragraph (c) provides that the ERO must file the delegation agreement with the Commission for approval. Such filing must also

demonstrate that: the Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board; the Regional Entity otherwise satisfies the ERO certification provisions of proposed regulation section 38.3; and the agreement promotes for effective and efficient administration of Bulk-Power System reliability.

80. The Commission interprets Subtitle A as meaning the only delegated authority a Regional Entity would possess would be the authority to enforce Reliability Standards approved by the Commission in a specific region. That interpretation is consistent with section 215(a)(7). A Regional Entity may also propose Reliability Standards to the ERO, that, if ultimately approved by the Commission, would become regional variances in a specific region. Any such regional variances would be ERO variances, not Regional Entity Reliability Standards, since it would be the ERO, not the Regional Entity, that submits the proposed Reliability Standard to the Commission for its review. The Commission anticipates that any such regional variances would supplement ERO Reliability Standards, not substitute for them. The Commission seeks comment on this interpretation.

81. The Commission interprets section 215 of the FPA to mean that a Regional Entity shall comply with the relevant ERO certification and delegation criteria on an ongoing basis, and that a violation of the certification or delegation criteria constitutes a violation of the FPA. Accordingly, as the Commission explained above with respect to the ERO in section 38.6(a) and (b), it will conduct periodic compliance audits of the Regional Entities and, if it finds a violation of the relevant ERO certification as it applies to the Regional Entities or the ERO delegation criteria, the Commission may suspend a Regional Entity's certification or delegation agreement, or decertify a Regional Entity. In addition, the ERO may petition the Commission or file a complaint if it believes that a Regional Entity is no longer in compliance with the relevant ERO certification or delegation criteria.

82. Paragraph (d) provides that the Commission may modify such delegation; however, the ERO and Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of Bulk-Power System reliability and should be approved.

83. Paragraph (e) provides that, if an entity seeking to enter into a delegation agreement is unable within 180 days after proposing a delegation agreement to the ERO to reach an agreement with the ERO, and it can demonstrate that continued negotiations with the ERO would not likely result in a delegation agreement within a reasonable amount of time, such entity may request that the Commission assign the ERO's authority to enforce Reliability Standards within a region to such entity. Paragraph (f) requires that an approved Regional Entity shall periodically submit to the Commission an application to be re-approved as a Regional Entity.

84. In addition to seeking comments on the rules relating to the delegation of ERO authority to Regional Entities discussed above, the Commission seeks comment on the following related issues:

(1) Should the Commission prescribe a size, scope, or configuration requirement for the Regional Entities? And, if so, what should it be?

(2) What is the role of the Regional Entities in relationship to the ERO?

(3) Beyond enforcement and the proposal of Reliability Standards to the ERO, what, if any, additional authority should the Regional Entities be given?

(4) Should the ERO be required to submit a standardized form of delegation agreement concurrently with the ERO application that would delineate a uniform relationship between the ERO and all Regional Entities or should delegation agreements be tailored to the individual needs and circumstances of each region and the ERO and submitted for approval as they are executed by the parties?

(5) To what extent should the ERO, when delegating responsibility to Regional Entities, require uniform processes in matters including, but not limited to, governance, collection of dues and fees, compliance monitoring, and enforcement action procedures?

(6) What role, if any, should the ERO play in the approval or appeal of an enforcement action undertaken by a Regional Entity?

(7) What, if any, responsibility or involvement should the ERO have with regard to the funding of the Regional Entities?

(8) Should the certification and delegation criteria for a Cross-Border Regional Entity specify that each country represented in the region should have the opportunity to have members from the country on the board of the Regional Entity in numbers that reflect the country's approximate percentage of net energy for load in that

region, similar to that provided in the bilateral principles?

(9) Should the Commission set the standard by which Regional Entity applications to the ERO will be reviewed or should the ERO be allowed to determine this standard? Given that section 215(e)(4) of the FPA requires that the ERO and the Commission shall rebuttably presume that a proposal for a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of bulk-power reliability, should a higher standard apply to Regional Entities that are not organized on an Interconnection-wide basis? What should the higher standard specify? Should a Regional Entity not organized on an Interconnection-wide basis have the burden to demonstrate that it has appropriate regional scope and configuration to promote effective and efficient administration of Bulk-Power System reliability?

(10) Paragraph (f) of section 38.7 requires a Regional Entity approved by the Commission to periodically submit to the Commission an application to be re-approved as a Regional Entity. We seek comments on what would constitute a reasonable length of time for such periodic re-approval to be effective. For example, is a five-year approval period appropriate? How far in advance should a Regional Entity be required to submit its application for re-approval before its current approval period expires? What role, if any, should the ERO have in the re-approval process? Would the ERO have to resubmit a delegation agreement?

(11) Section 215(e)(4) of the FPA and proposed regulation section 38.7(c)(3) require that the ERO, when filing a delegation agreement, include a statement demonstrating that the agreement promotes effective and efficient administration of Bulk-Power System reliability. What standards, guidelines, measures or criteria should the Commission apply in determining whether a delegation agreement promotes effective and efficient administration of Bulk-Power System reliability? If the primary function of a Regional Entity is enforcement of Reliability Standards, in what ways will Regional Entities bring effective and efficient administration in the enforcement function?

8. Changes in Electric Reliability Organization Rules and Regional Entity Rules—Section 38.8

85. Paragraph (a) of proposed regulation section 38.8 provides that the ERO shall file with the Commission for approval any proposed ERO rule or rule

change, accompanied by an explanation of its basis and purpose. It also provides that a Regional Entity shall submit a Regional Entity Rule or rule change with the ERO and, upon approval by the ERO, the ERO shall file with the Commission for approval of any proposed Regional Entity Rule or rule change accompanied by an explanation of its basis and purpose. Paragraph (b) provides that the Commission, upon its own motion or complaint, may propose changes to the rules of the ERO or a Regional Entity.

86. Paragraph (c) provides that a proposed ERO rule or rule change, or Regional Entity rule or rule change, shall take effect upon a finding by Commission, after notice and opportunity for comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of section 38.3.

9. Process for Resolution of Conflicts With a Reliability Standard—Section 38.9

87. Section 215(d)(6) of the FPA requires that the Commission's final rule include fair processes for the identification and timely resolution of any conflict between a Reliability Standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to a Transmission Organization. If a participant in the ERO's standards development process perceives a potential conflict, the participant should inform the ERO of the potential conflict to help assure that proposed standards do not contain any such conflicts. However, if any person believes that a proposed standard that the ERO has submitted to the Commission for approval includes such a conflict, such person should inform the Commission of such conflict by intervening and commenting in the Commission proceeding to review the proposed Reliability Standard.

88. If, after the Commission has approved a Reliability Standard, a Transmission Organization becomes aware of a conflict between a Reliability Standard and any function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission applicable to such Transmission Organization, the Transmission Organization would be required to utilize the process set forth in this proposed regulation to resolve the conflict. Specifically, paragraph (a) of proposed regulation section 38.9 provides that, if a Transmission Organization determines that a

Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the Transmission Organization shall expeditiously notify the Commission, the ERO and the relevant Regional Entity of the conflict. If any person believes that an approved Reliability Standard includes such a conflict, such person should notify the Commission of such conflict.

89. Paragraph (b) provides that, unless the Commission orders otherwise, after notice and opportunity for hearing, within sixty (60) days after the date that a notice was filed, the Commission will issue an order determining whether a conflict does, in fact, exist. If the Commission finds that there is a conflict, it will seek to resolve the conflict by either directing the Transmission Organization to file a modification to the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 206 of the FPA (as set forth in the statute) or, if appropriate, directing the ERO to develop for Commission review a proposed modification to the conflicting Reliability Standard.

90. Paragraph (c) provides that, until a determination is made by the Commission and any ordered change becomes effective, the Transmission Organization shall continue to follow the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization.

91. The Commission seeks examples of situations or areas of concern in which commenters believe that conflicts between reliability standards and Transmission Organization tariffs exist or may arise.

10. Procedures for Establishment and Recognition of Regional Advisory Bodies—Section 38.10

92. Paragraph (a) of proposed regulation section 38.10 provides that the Commission shall consider a petition to establish a Regional Advisory Body that is submitted by at least two-thirds of the states within a region that have more than one-half of their electric load served within the region. Paragraph (b) provides that a petition shall include all organizational documents and a statement that the Regional Advisory Body is composed of one member from each state in the region, appointed by the governor of each state, and may include representatives of agencies,

states and provinces outside the United States.

93. Paragraph (c) provides that a Regional Advisory Body may provide advice to the Commission, ERO or a Regional Entity with respect to the governance of an existing or proposed Regional Entity within the same region; whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest; whether fees for all activities under this section proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and any other responsibilities requested by the Commission. Paragraph (d) provides that the Commission may give deference to the advice of any such Regional Advisory Body if it is organized on an Interconnection-wide basis.

94. In addition to comment on the proposed regulation discussed above, the Commission seeks comment on the scope of the term "region" as used in section 38.10. In particular, should the region represented by a Regional Advisory Body correspond to that of an existing or proposed Regional Entity?

11. Reliability Reports—Section 38.11

95. Paragraph (a) of section 38.11 of the proposed regulations provides that the ERO shall conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America. This first phrase of this subsection tracks the statutory language of section 215(g) of the FPA. In addition, this subsection would set forth the frequency of such periodic assessments and identify the entities to which the ERO must report the results of the periodic assessments, including the Commission, DOE, Regional Entities, and Regional Advisory Bodies. Paragraph (b) of this subsection would require either annual or quarterly reporting by the ERO and Regional Entities on their enforcement actions and the associated penalties assessed, in a manner to be prescribed by the Commission.

12. Review of State Action—Section 38.12

96. Consistent with section 215(i)(3) of the FPA, paragraph (a) of proposed regulation section 38.12 provides that nothing in this regulation shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any reliability standard.

97. Paragraph (b) of proposed regulation section 38.12 provides that, where a state takes action to ensure the safety, adequacy and reliability of electric service, the ERO, a Regional Entity or other party may apply to the Commission for an order determining whether such state action is inconsistent with a Reliability Standard. The Commission will, after notice and opportunity for hearing, and taking into consideration any recommendation of the ERO, issue a final order determining the matter within ninety (90) days.

98. Paragraph (c) provides that the Commission, after consultation with the ERO and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

13. Funding of the Electric Reliability Organization—Section 38.13

99. FPA section 215 does not contain any specific requirements regarding the mechanism for funding the ERO, other than stating that the Commission may certify an ERO if it determines that such ERO, *inter alia*, has established rules that "allocate equitably reasonable dues, fees, and other charges among end users * * *" (FPA section 215(c)(2)(B)). The Commission believes that certainty regarding the funding of the ERO is essential for the stability and ultimate success of the organization. Accordingly, proposed section 38.13 provides requirements related to the funding and budget oversight of the ERO. In particular, paragraphs (a) and (b) of proposed regulation section 38.13, which are intended to make the ERO accountable to the Commission for its budget for activities within the United States, provide that the ERO must file its proposed annual budget for these activities and supporting materials in sufficient detail to justify the requested funding requirement 130 days in advance of the beginning of each fiscal year, and the Commission, after public notice and opportunity for comment, shall issue an order accepting, rejecting or remanding and modifying the proposed ERO budget no later than sixty (60) days in advance of the beginning of the ERO's fiscal year.

100. Paragraphs (c) and (d) of section 38.13 are intended to provide a Commission-approved mechanism for mandatory ERO funding. However, rather than the Commission dictating a funding mechanism, the NOPR would allow an ERO applicant the discretion to propose the funding mechanism for Commission approval. Specifically, paragraph (c) states that any person who submits an application for certification as the ERO must include a plan, formula

and/or methodology for the allocation and assessment of ERO dues, fees and charges; and the certified ERO may subsequently file with the Commission a request to modify the plan, formula and/or methodology from time-to-time in the ERO's discretion. Paragraph (d) provides that all entities within the Commission's jurisdiction as set forth in section 215(b) of the FPA are required to pay the ERO's assessment of dues, fees and charges in a timely manner reasonably designated by the ERO.

101. Finally, paragraph (e) provides that any person who submits an application for certification as the ERO may include a plan for a transitional funding mechanism that would allow such person, if certified as the ERO, to continue existing operations without interruption as it transitions from one method of funding to another. The maximum duration of any proposed transitional funding mechanism is not to exceed eighteen (18) months from the date of certification.

102. The Commission notes that NERC currently is funded based on "net energy for load," which represents the aggregate annual energy consumption of end use customers in a region, with costs of certain programs and tools which benefit only specific regions or parties billed only to the beneficiaries of the programs or tools. The Commission believes that a funding method based on net energy for load meets the standard of section 215(c)(3) of the FPA and would be appropriate for the allocation and assessment of ERO dues, fees and charges.

103. In addition to comments on the proposed ERO funding regulations, the Commission asks for comments on the following questions:

(1) Should the proposed funding requirements be extended to the Regional Entities?

(2) The Commission notes the bilateral principles include several funding principles: (a) A principle specifying that net energy for load should be the primary basis upon which the costs of the ERO are assigned and that costs for one region or entity should be directly assigned to that region or entity; (b) a principle specifying that funding mechanisms, budget direction and budget levels should reflect consultations with appropriate stakeholders and authorities in each country; and (c) a principle specifying that the appropriate authorities in each country should be responsible for approving and ensuring cost recovery by the ERO and Regional Entities within their respective jurisdictions in a timely manner. Should the proposed rule address these types of funding-related

details or should the ERO and Cross-Border Regional Entities have the discretion to address these matters at a later time?

14. Other Matters

104. While the Electricity Modernization Act of 2005 can be read to suggest a two-step process in which an applicant will apply for ERO certification and then submit proposed Reliability Standards after certification as the ERO, the Commission interprets the statute as allowing an applicant to simultaneously apply for ERO certification and submit proposed Reliability Standards for Commission review. The Commission believes that a one-step process would allow for quicker implementation of Reliability Standards. Although the Commission is allowing an applicant to submit multiple Reliability Standards at the same time, the Commission interprets section 215 of the FPA as allowing the Commission to review each Reliability Standard individually, rather than as a package. Therefore, the Commission interprets section 215 as allowing it to reject or require modification of some individual Reliability Standards while at the same time affirming other individual standards submitted concurrently.

IV. Information Collection Statement

105. The Commission estimates the number of applicants to be recognized by the Commission under the proposed rule as the single ERO or as a Regional Entity as up to three (3) and up to eight (8), respectively. As these entities are select, special purpose entities of the new federal law and do not yet exist, it is not feasible to survey candidate organizations to project the anticipated burden of complying with the proposed rule.

Title:

Action: Proposed Information Collection.

OMB Control No: To be determined.

The applicant will not be penalized for failure to respond to this information collection unless the information collection displays a valid OMB control number or the Commission has provided justification as to why the control number should not be displayed.

Respondents: Non-profit service organizations.

Necessity of the Information: The information collected from the ERO or Regional Entities under the requirements of FERC-725 is used by the Commission to implement the statutory provisions of section 215 of the FPA and implemented by the

Commission in the Code of Federal Regulations under 18 Part 38. As noted above, prior to the enactment of section 215 of the FPA under the Electricity Modernization Act of 2005, the Commission had acted primarily as an economic regulator of wholesale power markets and the interstate transmission grid promoting a more reliable electricity system by promoting regional coordination and planning of the interstate grid through ISOs and RTOs, adopting transmission pricing policies that provide price signals for the most reliable and efficient operation and expansion of the grid, and providing pricing incentives at the wholesale level for investment in grid improvements. The Electricity Modernization Act of 2005 buttresses the Commission's efforts to strengthen the interstate transmission grid through the grant of new authority pursuant to section 215 of the FPA which provides for a system of mandatory reliability rules developed by the ERO, established by the Commission, and enforced by the Commission, subject to Commission review.

106. Section 215 of the FPA provides that all users, owners and operators of the Bulk-Power System are subject to the jurisdiction of the Commission for the purposes of approving Reliability Standards and enforcing compliance with such standards. However, the NOPR is limited to developing and implementing the processes and procedures which section 215 of the FPA directs the Commission to develop and undertake with regard to the formation and functions of the ERO and Regional Entities.

Internal Review: The Commission has reviewed these requirements pertaining to the certification of an ERO, the establishment of Reliability Standards and Regional Entities and has determined the proposed requirements are necessary for the Commission to meet the statutory provisions of the Electricity Modernization Act of 2005. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the bulk power system.

107. For submitting comments concerning the collection of information and the associated burden estimates, please send your comments to: (1) Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone (202) 502-8415, fax (202) 273-0873, e-mail: michael.miller@ferc.gov] and (2) the Office of Management and Budget [Attention: Desk Officer for the Federal

Energy Regulatory Commission, fax (202) 395-7285, e-mail oir_submission@omb.eop.gov].

V. Environmental Analysis

108. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.¹⁹ The Commission concludes that neither an Environmental Assessment or an Environmental Impact Statement is required for this NOPR pursuant to section 380.4(a)(2)(ii) of the Commission regulations, which provides a "categorical exclusion" for rules that do not substantively change the effect of legislation.²⁰

VI. Regulatory Flexibility Act Certification

109. The Regulatory Flexibility Act of 1980 (RFA)²¹ requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. However, the RFA does not define "significant" or "substantial" instead leaving it up to an agency to determine the impact of its regulations on small entities.

110. In drafting this rule, the Commission has followed the provisions of both the RFA and the Paperwork Reduction Act to consider the potential impact of regulations on small business and other small entities. Specifically, the RFA directs agencies to consider four regulatory alternatives to lessen the impact on small entities: Tiering or establishment of different compliance or reporting requirements for small entities; classification, consolidation, clarification or simplification of compliance and reporting requirements; performance rather than design standards; and exemptions.

111. As noted above, the Electricity Modernization Act of 2005 directs the Commission to issue a final rule to implement the requirements of section 215 of the FPA within 180 days after the date of its enactment. In accordance with this directive, the proposed rule is intended to implement section 215 of the FPA. In particular, the proposed rule implements the statutory authority and responsibilities assigned to the ERO,

¹⁹ Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 *Fed. Reg.* 47,897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,783 (1987).

²⁰ 18 CFR 380.4(a)(2)(ii) (2005).

²¹ 5 U.S.C. 601-12 (2000).

Regional Entities, and Regional Advisory Bodies within the United States except Alaska and Hawaii. The Electricity Modernization Act specifies that the ERO and Regional Entities are not departments, agencies or instrumentalities of the United States Government.

However, the ERO and Regional Entities will not be like most other businesses, profit or not-for-profit. Congress created the concept of the ERO and Regional Entities as the select, special purpose entities that will transition the oversight of Bulk-Power System reliability from voluntary, industry organizations to independent organizations subject to Commission jurisdiction and oversight. As such, the ERO and Regional Entities should not be considered a small entity under the RFA. Accordingly, the proposed reliability rule is not likely to impact certain small entities.

VII. Comment Procedures

112. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due October 7, 2005. Comments must refer to Docket No. RM05-30-000, and must include the commenter's name, the organization represented, if applicable, and the commenter's address. Comments may be filed either in electronic or paper format.

113. Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and fourteen (14) copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

114. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VIII. Document Availability

115. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all

interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (<http://www.ferc.gov>) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

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

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

List of Subjects in 18 CFR Part 38

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

By direction of the Commission.

Magalie R. Salas,
Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18, *Code of Federal Regulations*, by adding Part 38 to read as follows:

PART 38—RULES CONCERNING CERTIFICATION OF THE ELECTRIC RELIABILITY ORGANIZATION; AND PROCEDURES FOR THE ESTABLISHMENT, APPROVAL, AND ENFORCEMENT OF ELECTRIC RELIABILITY STANDARDS

Sec.

- 38.1 Definitions.
- 38.2 Jurisdiction and Applicability.
- 38.3 Electric Reliability Organization certification.
- 38.4 Approval of Reliability Standards.
- 38.5 Enforcement of Reliability Standards.
- 38.6 Enforcement of Commission Rules and Orders.
- 38.7 Delegation of certain Electric Reliability Organization Authority to Regional Entities.
- 38.8 Changes in Electric Reliability Organization Rules and Regional Entity Rules.
- 38.9 Process for Resolution of Conflicts With a Reliability Standard.

38.10 Procedures for Establishment and Recognition of Regional Advisory Bodies.

38.11 Reliability Reports.

38.12 Review of State Action.

38.13 Funding of the Electric Reliability Organization.

Authority: Section 215 of the Federal Power Act.

§ 38.1 Definitions.

As used in this part:

Bulk-Power System means facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof), and electric energy from generating facilities needed to maintain transmission system reliability. The term does not include facilities used in the local distribution of electric energy.

Cross-Border Regional Entity means a Regional Entity for which the size and scope includes a portion of Canada or Mexico.

Cybersecurity Incident means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

Electric Reliability Organization or "ERO" means the organization certified by the Commission under § 38.3 the purpose of which is to establish and enforce Reliability Standards for the Bulk-Power System, subject to Commission review.

ERO Rules means, for purposes of this section, the bylaws, rules of procedure and other organizational rules and protocols of the Electric Reliability Organization.

Interconnection means a geographic area in which the operation of Bulk-Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the facilities within their control.

Regional Advisory Body means an entity established upon petition to the Commission pursuant to section 215(j) of the FPA that is organized to advise the Electric Reliability Organization, a Regional Entity, or the Commission regarding certain matters in accordance with § 38.10.

Regional Entity means an entity having enforcement authority pursuant to section 38.7.

Regional Entity Rules means, for purposes of this Part, the bylaws, rules

of procedure and other organizational rules and protocols of a Regional Entity.

Reliability Standard means a requirement approved by the Commission under this section, to provide for Reliable Operation of the Bulk-Power System. The term includes requirements for the operation of existing Bulk-Power System facilities, including cybersecurity protection, and the design of planned additions or modifications to such facilities to the extent necessary to provide for Reliable Operation of the Bulk-Power System, but the term does not include any requirement to enlarge such facilities or to construct new transmission capacity or generation capacity.

Reliable Operation means operating the elements of the Bulk-Power System within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a Cybersecurity Incident, or unanticipated failure of system elements.

Transmission Organization means a regional transmission organization, independent system operator, independent transmission provider, or other transmission organization finally approved by the Commission for the operation of transmission facilities.

§ 38.2 Jurisdiction and applicability.

Within the United States (other than Alaska and Hawaii), the Electric Reliability Organization, any Regional Entities, and all users, owners and operators of the Bulk-Power System, including but not limited to entities described in section 201(f) of the Federal Power Act, shall be subject to the jurisdiction of the Commission for the purposes of approving Reliability Standards established under this section and enforcing compliance with this section.

§ 38.3 Electric Reliability Organization certification.

(a) Any person may submit an application to the Commission for certification as an Electric Reliability Organization no later than sixty (60) days following Commission issuance of the final rule. Such application shall include a form of notice and an original and fourteen (14) copies of the application.

(b) The Commission may certify one such applicant as an Electric Reliability Organization, if the Commission determines such applicant:

(1) Has the ability to develop and enforce, subject to § 38.5, Reliability Standards that provide for an adequate

level of reliability of the Bulk-Power System, and

(2) Has established rules that:

(i) Assure its independence of users, owners and operators of the Bulk-Power System while assuring fair stakeholder representation in the selection of its directors and balanced decisionmaking in any Electric Reliability Organization committee or subordinate organizational structure;

(ii) Allocate equitably reasonable dues, fees and charges among end users for all activities under this section;

(iii) Provide fair and impartial procedures for enforcement of Reliability Standards through the imposition of penalties in accordance with § 38.5, including limitations on activities, functions, operations, or other appropriate sanctions or penalties;

(iv) Provide reasonable notice and opportunity for public comment, due process, openness, and balance of interests in developing Reliability Standards, and otherwise exercising its duties; and

(v) Provide appropriate steps, after certification by the Commission as the Electric Reliability Organization, to gain recognition in Canada and Mexico.

(c) The approved ERO is required to periodically submit an application to be recertified as the ERO, in accordance with any requirements the Commission issues in this regard.

§ 38.4 Approval of Reliability Standards.

(a) The Electric Reliability Organization must consider and develop Reliability Standards or modifications to Reliability Standards to be applicable to the entire Bulk-Power System or a particular region or Interconnection. The Electric Reliability Organization shall file each Reliability Standard or modification to a Reliability Standard that it proposes to be made effective under this section with the Commission. The filing shall include an original and fourteen (14) copies, a form of notice, a concise statement of the basis and purpose of the standard and a summary of the standard development proceedings conducted by the Electric Reliability Organization.

(b) The Commission may approve by rule or order a proposed Reliability Standard or a modification to a Reliability Standard if it determines, after notice and opportunity for public hearing, that the standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.

(1) The Commission shall give due weight to the technical expertise of the Electric Reliability Organization with respect to the content of a proposed

Reliability Standard or modification to a Reliability Standard,

(2) The Commission shall give due weight to the technical expertise of a Regional Entity organized on an Interconnection-wide basis with respect to a Reliability Standard to be applicable within that Interconnection, and

(3) The Commission shall not defer to the Electric Reliability Organization or a Regional Entity with respect to the effect of a Reliability Standard or modification to a Reliability Standard on competition.

(c) An approved Reliability Standard or a modification to a Reliability Standard shall take effect as approved by the Commission.

(d) The Electric Reliability Organization shall rebuttably presume that a proposal for a Reliability Standard or a modification to a Reliability Standard to be applicable on an Interconnection-wide basis is just, reasonable, not unduly discriminatory or preferential, and in the public interest, if such proposal is from a Regional Entity organized on an Interconnection-wide basis.

(e) The Commission shall remand to the Electric Reliability Organization for further consideration a proposed Reliability Standard or modification to a Reliability Standard that the Commission disapproves in whole or part.

(f) The Commission may, upon its own motion or a complaint, order the Electric Reliability Organization to submit a proposed Reliability Standard or modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out this section.

(g) The Commission may, upon its own motion or a complaint, review a previously-approved Reliability Standard. If, after notice and opportunity for hearing, the Commission determines that the Reliability Standard, or any provision thereof, is unjust or unreasonable, unduly discriminatory or preferential, or not in the public interest, the Commission may remand the Reliability Standard to the Electric Reliability Organization.

(h) The Commission, when remanding a Reliability Standard, may state a deadline by which the Electric Reliability Organization must submit a proposed revised Reliability Standard.

§ 38.5 Enforcement of Reliability Standards.

(a) The Electric Reliability Organization, or a Regional Entity, may

impose, subject to paragraph (d) of this section, a penalty on a user, owner or operator of the Bulk-Power System for a violation of a Reliability Standard approved by the Commission under § 38.4 if the Electric Reliability Organization or the Regional Entity, after public notice and opportunity for hearing:

(1) Finds that the user, owner or operator has violated a Reliability Standard approved by the Commission under § 38.4; and

(2) Files notice and the record of the Electric Reliability Organization's or Regional Entity's proceeding with the Commission. Simultaneously with the filing of a notice with the Commission, the Electric Reliability Organization or Regional Entity shall serve a copy of the notice on the entity that is the subject of the enforcement action.

(b) A Regional Entity shall file notice with the Electric Reliability Organization of any enforcement action it takes.

(c) Any notice of an enforcement action, whether by the Electric Reliability Organization or a Regional Entity, shall consist of:

(1) The name of the entity against whom the enforcement action was taken;

(2) A statement describing the enforcement action taken;

(3) A statement setting forth findings of fact with respect to the act or practice that resulted in the enforcement action;

(4) A statement describing any sanction imposed;

(5) The record of the proceeding;

(6) A form of notice suitable for publication; and

(7) Other matters the Electric Reliability Organization or the Regional Entity, as appropriate, may find relevant.

(d) A penalty imposed under paragraph (a) of this section may take effect not earlier than the thirty-first (31st) day after the Electric Reliability Organization or Regional Entity files with the Commission notice of the penalty and the record of the proceedings.

(1) Such penalty shall be subject to review by the Commission, on its own motion or upon application by the user, owner or operator of the Bulk-Power System that is the subject of the penalty filed within thirty (30) days after the date such notice is filed with the Commission. In the absence of the filing of an application for review or motion or other action by the Commission, the enforcement action shall be affirmed by operation of law upon the expiration of the 30-day period for filing of an application for review.

(2) Application to the Commission for review, or the initiation of review by the Commission on its own motion, shall not operate as a stay of such penalty unless the Commission otherwise orders upon its own motion or upon application by the user, owner or operator that is the subject of such penalty.

(3) In any proceeding to review a penalty imposed under paragraph (a) of this section, the Commission, after public notice and opportunity for hearing (which hearing may consist solely of the record before the Electric Reliability Organization or Regional Entity and the opportunity for the presentation of supporting reasons to affirm, modify, or set aside the penalty), shall by order affirm, set aside or modify the penalty and, if appropriate, remand to the Electric Reliability Organization or Regional Entity for further proceedings.

(4) An applicant shall file an original and fourteen (14) copies of an application for review and shall comply with the requirements set forth in the Commission's Rules of Practice and Procedure, unless otherwise directed by the Commission. An application shall contain a complete and detailed explanation of the reasons why the applicant believes that the Electric Reliability Organization or Regional Entity erred when assessing the penalty, the amount of the penalty or the form of the penalty, and such application must provide any additional support for this contention that is not included in the record submitted by the Electric Reliability Organization or Regional Entity pursuant to this section.

(5) Unless otherwise ordered by the Commission, answers, interventions, and comments to an application for review of a penalty imposed under paragraph (a) of this section must be filed within twenty (20) days after the application is filed.

(6) One of the following procedures may be used to resolve application for review of a penalty imposed under paragraph (a) of this section:

(i) The Commission may issue an order on the merits to affirm, set aside, reinstate or modify the penalty and, if appropriate, remand to the Electric Reliability Organization or Regional Entity based upon the pleadings; or

(ii) The Commission may establish a hearing before an administrative law judge or initiate such further procedures as may be appropriate.

(7) Expedited review. Unless determined otherwise by the Commission on a case by case basis, the Commission shall take action on an application for review of a penalty

within sixty (60) days of the date the application is filed. Expedited procedures shall be established for any hearing before an administrative law judge on a case by case basis.

(8) Unless the Commission determines otherwise, an enforcement action pursuant to § 38.5 that involves a Cybersecurity Incident will be non-public. The user, owner or operator of the Bulk-Power System that is the subject of the enforcement action will be given timely notice and an opportunity for hearing. The public will not be notified and the public will not be allowed to participate in an enforcement action before the Electric Reliability Organization, a Regional Entity or the Commission.

(e) On its own motion or upon complaint, the Commission may order compliance with a Reliability Standard and may impose a penalty against a user, owner or operator of the Bulk-Power System, if the Commission finds, after public notice and opportunity for hearing, that the user, owner or operator of the Bulk-Power System has engaged or is about to engage in any acts or practices that constitute or will constitute a violation of a Reliability Standard.

(f) Any penalty imposed for the violation of a Reliability Standard shall bear a reasonable relation to the seriousness of the violation and shall take into consideration efforts of such user, owner or operator of the Bulk-Power System to remedy the violation in a timely manner. The imposition of penalties is not limited to monetary penalties and may include, but is not limited to, limitations on activities, functions, operations, or other appropriate sanctions, including the establishment of a reliability watch list composed of major violators. Monetary penalties shall be paid in a timely manner.

(g) Reporting of Violations and Potential Violations: The Electric Reliability Organization and all Regional Entities shall have in place procedures to immediately notify the Commission of all violations and potential violations of Reliability Standards when the Electric Reliability Organization or Regional Entity first notifies the user, owner or operator of the violation or potential violation.

(1) Any person that submits an application to the Commission for certification as an Electric Reliability Organization shall include in such application a proposal for the notification and reporting to the Commission of all violations and potential violations of Reliability Standards.

(2) Any agreement for the delegation of authority to a Regional Entity shall include a proposal for the notification and reporting to the Commission of all violations and potential violations of Reliability Standards.

(3) All reports of violations and potential violations shall include the entity's name, when the violation or potential occurred, what standard was violated or potentially violated and the name of a person knowledgeable about the violation or potential violation to serve as a point of contact to provide the Commission with further details on the matter, as they develop, on an ongoing basis.

(4) All reports of violations and potential violations shall be filed electronically with the Commission.

§ 38.6 Enforcement of Commission Rules and Orders.

(a) The Commission may take such action as is necessary and appropriate against the Electric Reliability Organization or a Regional Entity to ensure compliance with a Reliability Standard or any Commission order affecting the Electric Reliability Organization or a Regional Entity, including, but not limited to:

(1) Upon notice and opportunity for hearing, suspension or rescission of the Commission's grant of certification to the Electric Reliability Organization, if the Electric Reliability Organization no longer meets the statutory standards for certification.

(2) Upon notice and opportunity for hearing, suspension or rescission of the Commission's approval of an agreement to delegate certain Electric Reliability Organization authority to a Regional Entity.

(3) Imposition of civil penalties under the Federal Power Act.

(b) The Commission will periodically audit and review the Electric Reliability Organization's and Regional Entities' compliance with the statutory and regulatory criteria for certification and delegation of functions.

§ 38.7 Delegation of certain Electric Reliability Organization authority to Regional Entities.

(a) The Electric Reliability Organization may enter into an agreement to delegate authority to a Regional Entity for the purpose of proposing Reliability Standards to the Electric Reliability Organization and enforcing Reliability Standards under § 38.5(a).

(b) A delegation agreement shall not be effective until it is approved by the Commission.

(c) The Electric Reliability Organization shall file an original and

fourteen (14) copies of a delegation agreement. In addition, such filing shall include a detailed statement demonstrating that:

(1) The Regional Entity is governed by an independent board, a balanced stakeholder board, or a combination independent and balanced stakeholder board,

(2) The Regional Entity otherwise satisfies the provisions of § 38.3, and

(3) The agreement promotes effective and efficient administration of Bulk-Power System reliability.

(d) The Commission may modify such delegation; however, the Electric Reliability Organization and Commission shall rebuttably presume that a proposal for delegation to a Regional Entity organized on an Interconnection-wide basis promotes effective and efficient administration of Bulk-Power System reliability and should be approved.

(e) If an entity seeking to enter into a delegation agreement is unable to reach an agreement with the Electric Reliability Organization within 180 days after proposing a delegation agreement to the Electric Reliability Organization, and it can demonstrate that continued negotiations with the Electric Reliability Organization would not likely result in a delegation agreement within a reasonable period of time, such entity may request that the Commission assign the Electric Reliability Organization's authority to enforce Reliability Standards within a region to such entity.

(f) An approved Regional Entity shall be required to periodically submit an application to be re-approved as a Regional Entity, in accordance with any requirements the Commission issues in this regard.

§ 38.8 Changes in Electric Reliability Organization Rules and Regional Entity Rules.

(a) The Electric Reliability Organization shall file with the Commission for approval any proposed Electric Reliability Organization Rule or rule change. A Regional Entity shall submit a Regional Entity Rule or rule change with the Electric Reliability Organization and, upon approval by the Electric Reliability Organization, the Electric Reliability Organization shall file with the Commission for approval of any proposed Regional Entity Rule or rule change. Such filing by the Electric Reliability Organization shall be accompanied by an explanation of the basis and purpose for the rule or rule change, together with a description of the proceedings conducted by the

Electric Reliability Organization or Regional Entity to develop the proposal.

(b) The Commission upon its own motion or complaint may propose changes to the Electric Reliability Organization rules or Regional Entity rules.

(c) A proposed Electric Reliability Organization rule or rule change or Regional Entity rule or rule change shall take effect upon a finding by Commission, after notice and opportunity for public comment, that the change is just, reasonable, not unduly discriminatory or preferential, is in the public interest, and satisfies the requirements of § 38.3.

§ 38.9 Process for resolution of conflicts with a Reliability Standard.

(a) If a Transmission Organization determines that a Reliability Standard may conflict with a function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission with respect to such Transmission Organization, the Transmission Organization shall expeditiously notify the Commission, the Electric Reliability Organization and the relevant Regional Entity of the conflict.

(b) Unless the Commission orders otherwise, after notice and opportunity for hearing, within sixty (60) days of the date that a notice was filed under paragraph (a) of this section, the Commission shall issue an order determining whether a conflict exists and, if so, resolve the conflict by directing

(i) The Transmission Organization to file a modification of the conflicting function, rule, order, tariff, rate schedule, or agreement pursuant to section 206 of the Federal Power Act or

(ii) The Electric Reliability Organization to propose a modification to the conflicting Reliability Standard pursuant to § 38.4 of the Commission's regulations.

(c) The Transmission Organization shall continue to follow the function, rule, order, tariff, rate schedule, or agreement accepted, approved, or ordered by the Commission until the Commission finds that a conflict exists, the Commission orders a change to such provision pursuant to section 206 of the Federal Power Act, and the ordered change becomes effective.

§ 38.10 Procedures for establishment and recognition of Regional Advisory Bodies.

(a) The Commission shall consider a petition to establish a Regional Advisory Body that is submitted by at least two-thirds of the states within a region that have more than one-half of their electric load served within the region.

(b) A petition to establish a Regional Advisory Body shall include all organizational documents and a statement that the Regional Advisory Body is composed of one member from each participating state in the region, appointed by the governor of each state, and may include representatives of agencies, states and provinces outside the United States.

(c) A Regional Advisory Body established by the Commission may provide advice to the Commission, Electric Reliability Organization or a Regional Entity with respect to:

(1) The governance of an existing or proposed Regional Entity within the same region;

(2) Whether a Reliability Standard proposed to apply within the region is just, reasonable, not unduly discriminatory or preferential, and in the public interest;

(3) Whether fees for all activities under this section proposed to be assessed within the region are just, reasonable, not unduly discriminatory or preferential, and in the public interest; and

(4) Any other responsibilities requested by the Commission.

(d) The Commission may give deference to the advice of a Regional Advisory Body established by the Commission if it is organized on an Interconnection-wide basis.

§ 38.11 Reliability reports.

(a) The Electric Reliability Organization shall conduct periodic assessments of the reliability and adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, Regional Entities, and Regional Advisory Bodies annually or more frequently if so ordered by the Commission.

(b) The Electric Reliability Organization and Regional Entities shall report on their enforcement actions and associated penalties to the Commission, the Secretary of Energy, relevant Regional Entities, and relevant Regional Advisory Bodies annually or quarterly, in a manner to be prescribed by the Commission.

§ 38.12 Review of state action.

(a) Nothing in this regulation shall be construed to preempt any authority of any state to take action to ensure the safety, adequacy, and reliability of electric service within that state, as long as such action is not inconsistent with any reliability standard.

(b) Where a state takes action to ensure safety, adequacy, and reliability of electric service, the Electric

Reliability Organization, Regional Entity or other affected party may apply to the Commission for a determination of consistency with a Commission-approved Reliability Standard.

(1) The application shall:

(i) Identify the state action complained of;

(ii) Identify the Reliability Standard(s) with which the state action is claimed to be inconsistent;

(iii) State the basis for the claim that the state action is inconsistent with a Reliability Standard; and

(iv) Include a form of notice.

(2) Within ninety (90) days of the application of the Electric Reliability Organization or other affected party, and after notice and opportunity for public comment, the Commission shall issue a final order determining whether the state action is inconsistent with a Reliability Standard, taking into consideration any recommendation of the Electric Reliability Organization.

(c) The Commission, after consultation with the Electric Reliability Organization and the state taking action, may stay the effectiveness of the state action, pending the Commission's issuance of a final order.

§ 38.13 Funding of the Electric Reliability Organization.

(a) The Electric Reliability Organization shall file with the Commission its proposed annual budget for activities within the United States and supporting materials in sufficient detail to justify the requested funding requirement 130 days in advance of the beginning of each fiscal year.

(b) The Commission, after public notice and opportunity for comment, shall issue an order either accepting, rejecting or remanding or modifying the proposed Electric Reliability Organization budget and business plan no later than sixty (60) days in advance of the beginning of the Electric Reliability Organization's fiscal year.

(c) Any person who submits an application for certification as the Electric Reliability Organization pursuant to the rules set forth in this section shall include in such application a plan, formula and/or methodology for the allocation and assessment of Electric Reliability Organization dues, fees and charges. The certified Electric Reliability Organization may subsequently file with the Commission a request to modify the plan, formula and/or methodology from time-to-time in the Electric Reliability Organization's discretion.

(d) All entities within the Commission's jurisdiction as set forth in section 215(b) of the Federal Power Act

are required to pay the Electric Reliability Organization's assessment of dues, fees and charges in a timely manner reasonably designated by the Electric Reliability Organization.

(e) Any person who submits an application for certification as the Electric Reliability Organization pursuant to the rules set forth in this section may include in such application a plan for a transitional funding mechanism that would allow such person, if certified as the Electric Reliability Organization, to continue existing operations without interruption as it transitions from one method of funding to another. The maximum duration of any proposed transitional funding mechanism is not to exceed eighteen (18) months from the date of certification.

[FR Doc. 05-17752 Filed 9-6-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 009-2005]

Justice Management Division; Privacy Act of 1974; Implementation

AGENCY: Justice Management Division, Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice (DOJ), Justice Management Division (JMD), proposes to exempt from certain subsections of the Privacy Act, a new Privacy Act system of records entitled "Federal Bureau of Investigation Whistleblower Case Files, JMD-023," as described in today's notice section of the **Federal Register**. The system maintains all documents and evidence filed with the Director of the Office of Attorney Recruitment and Management (OARM), JMD, pertaining to requests for corrective action by employees of, or applicants for employment with, the Federal Bureau of Investigation (FBI) (or recommendations for corrective action by the Office of the Inspector General or Office of Professional Responsibility) brought under the FBI's whistleblower regulations.

DATES: Submit any comments by October 17, 2005.

ADDRESSES: Address all comments in writing to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building), Facsimile Number (202) 307-1853. To ensure proper handling, please reference the AAG/A Order No.

on your correspondence. You may review an electronic version of this proposed rule at <http://www.regulations.gov>. You may also comment via the Internet to the DOJ/Justice Management Division at the following e-mail address: DOJPrivacyACTProposedRegulations@usdoj.gov; or by using the <http://www.regulations.gov> comment form for this regulation. When submitting comments electronically, you must include the AAG/A Order No. in the subject box.

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307-1823.

SUPPLEMENTARY INFORMATION: The FBI's whistleblower regulations are at 28 CFR part 27; the specific role of the OARM is at 28 CFR part 27.4. This is the basis for the new system of records, "Federal Bureau of Investigation Whistleblower Case Files, JMD-023." The DOJ/JMD proposes to exempt this system of records from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2) and (k).

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative Practices and Procedures, Courts, Freedom of Information, Sunshine Act, Privacy.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

§ 16.76 [Amended]

2. Section 16.76 is amended by adding paragraphs (c) and (d) to read as follows:

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5), and (8); and (g): Federal Bureau of Investigation Whistleblower Case Files (Justice/JMD-023). These exemptions apply only to the extent that information in a record contained

within this system is subject to exemptions pursuant to 5 U.S.C. 552a(j)(2) and (k).

(d) Exemption from the particular subsections is justified for the following reasons:

(1) Subsection (c)(3). To provide the subject with an accounting of disclosures of records in this system could inform that individual of the existence, nature, or scope of an actual or potential law enforcement or counterintelligence investigation, and thereby seriously impede law enforcement or counterintelligence efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties, civil remedies, or counterintelligence measures.

(2) Subsection (c)(4). This subsection is inapplicable to the extent that an exemption is being claimed for subsection (d).

(3) Subsection (d)(1). Information within this record system could relate to official federal investigations and matters of law enforcement. Individual access to these records could compromise ongoing investigations, reveal confidential informants and/or sensitive investigative techniques used in particular investigations, or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation. Disclosure may also reveal information relating to actual or potential law enforcement investigations. Disclosure of classified national security information would cause damage to the national security of the United States.

(4) Subsection (d)(2). Amendment of these records could interfere with ongoing criminal or civil law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(5) Subsections (d)(3) and (4). These subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(6) Subsection (e)(1). It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(7) Subsection (e)(2). To collect information from the subject individual could serve to notify the subject individual that he or she is the subject of a criminal investigation and thereby

present a serious impediment to such investigations.

(8) Subsection (e)(3). To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts.

(9) Subsection (e)(5). It is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement and counterintelligence, it is necessary to retain this information to aid in establishing patterns of activity and provide investigative leads.

(10) Subsection (e)(8). To serve notice could give persons sufficient warning to evade investigative efforts.

(11) Subsection (g). This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

Dated: August 31, 2005.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 05-17701 Filed 9-6-05; 8:45 am]

BILLING CODE 4410-FR-P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1404

Proposed Changes to Arbitration Policies, Functions, and Procedures

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Proposed rule: extension of comment period.

SUMMARY: This document extends the comment period for the proposed rule published on July 7, 2005 at 70 FR page 39209.

The Federal Mediation and Conciliation Service (FMCS) is proposing to revise 29 CFR part 1404, Arbitration Services. The revisions are intended to set forth the criteria and procedures for listing on the arbitration roster, removal from the arbitration roster, and expedited arbitration processing. Other changes include how parties may request arbitration lists or panels and fees associated with the arbitrators. The purpose of these changes is to facilitate the management and administration of the arbitration roster.

DATES: Written comments must be submitted to the office listed in the address section below on or before December 6, 2005.

ADDRESSES: Submit comments to the Maria A. Fried, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Comments may be submitted also by fax at (202) 606-5345 or electronic mail (e-mail) to *mfried@fmcs.gov*. All comments and data in electronic form must be identified by the appropriate agency form number.

FOR FURTHER INFORMATION CONTACT: Maria A. Fried, General Counsel and Federal Register Liaison, FMCS, 2100 K Street, NW., Washington, DC 20427. Telephone (202) 606-5444; Fax (202) 606-5345.

Dated: August 31, 2005.

Maria A. Fried,

General Counsel and Federal Register Contact.

[FR Doc. 05-17648 Filed 9-6-05; 8:45 am]

BILLING CODE 6732-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

Department of Defense Privacy Program

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense is proposing to update policies and responsibilities for the Defense Privacy Program which implements the Privacy Act of 1974 by showing organizational changes and realignments and by revising referenced statutory and regulatory authority.

DATES: Comments must be received on or before November 7, 2005 to be considered by this agency.

ADDRESSES: Send comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202-4512.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr., at (703) 607-2943.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (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 this Executive order.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104-4, "Unfunded Mandates Reform Act"

It has been determined that Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that Privacy Act rules for the Department of Defense do not have federalism implications. The rules do 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.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310, Subpart A-DoD Policy, is proposed to be amended as follows:

PART 310—DOD PRIVACY PROGRAM

1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

2. Revise § 310.1 to read as follows:

§ 310.1 Reissuance.

This part is reissued to consolidate into a single document (32 CFR part 310) Department of Defense (DoD) policies and procedures for implementing the Privacy Act of 1974, as amended (5 U.S.C. 552a) by authorizing the development, publication and maintenance of the DoD Privacy Program set forth by DoD Directive 5400.11, November 16, 2004, and 5400.11-R, August 31, 1983, both entitled: "DoD Privacy Program."

3. Amend § 310.3 by revising paragraph (a) to read as follows:

§ 310.3 Applicability and scope.

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereinafter referred to collectively as "the DoD Components"). This part is mandatory for use by all DoD Components. Heads of DoD Components may issue supplementary instructions only when necessary to provide for unique requirements within their Components. Such instructions will not conflict with the provisions of this part.

* * * * *

4. Amend § 310.4 by revising the definition of *Individual* to read as follows:

§ 310.4 Definitions.

* * * * *

Individual. A living person who is a citizen of the United States or an alien lawfully admitted for permanent residence. The parent of a minor or the legal guardian of any individual also may act on behalf of an individual. Members of the United States Armed Forces are individuals. Corporations, partnerships, sole proprietorships, professional groups, businesses, whether incorporated or unincorporated, and other commercial entities are not individuals.

* * * * *

5. Amend § 310.5 as follows:

- a. Remove the introductory text;
- b. Revise paragraphs (a) and (g);
- c. Add paragraph (j) to read as follows:

§ 310.5 Policy.

(a) The privacy of an individual is a personal and fundamental right that shall be respected and protected.

* * * * *

(g) Disclosure of records pertaining to personnel of the National Security Agency, the Defense Intelligence Agency, the National Reconnaissance Office, and the National Geospatial-Intelligence Agency shall be prohibited to the extent authorized by Public Law 86-36 (1959) and 10 U.S.C. 424. Disclosure of records pertaining to personnel of overseas, sensitive, or routinely deployable units shall be prohibited to the extent authorized by 10 U.S.C. 130b. Disclosure of medical records is prohibited except as authorized by DoD 6025.18-R.

* * * * *

(j) DoD Field Activities shall receive Privacy Program support from the Director, Washington Headquarters Services.

6. Amend § 310.6 as follows:

a. Revise paragraphs (a)(4), (b), (c) introductory text, (c)(3), (d) introductory text and (d)(5);

b. Add paragraph (a)(5[d3]) to read as follows:

§ 310.6 Responsibilities.

(a) * * *

(4) Serve as the Chair to the Defense Privacy Board and Defense Data Integrity Board (§ 310.9).

(5) Supervise and oversee the activities of the Defense Privacy Office (§ 310.9).

(b) The Director, Washington Headquarters Services, under the DA&M, OSD, shall provide Privacy Program support for DoD Field Activities.

(c) The General Counsel of the Department of Defense (GC, DoD) shall:

* * * * *

(3) Serve as a member of the Defense Privacy Board, the Defense Data Integrity Board, the Defense Privacy Board Legal Committee (§ 310.9).

(d) The Secretaries of the Military Departments and the Heads of the Other DoD Components, except as noted in § 310.5(j), shall:

* * * * *

(5) Submit reports, consistent with the requirements of DoD 5400.11-R, as mandated by 5 U.S.C. 552a and OMB Circular A-130, and as otherwise directed by the Defense Privacy Office.

* * * * *

7. Amend § 310.9 as follows:

a. Revise paragraphs (a)(1), (b)(1), (c)(1);

b. Redesignate the second paragraph (c) as a new paragraph (d);

c. Revise newly redesignated (d)(1)(vi) and (d)(1)(x) to read as follows:

§ 310.9 Privacy boards and office composition and responsibilities.

(a) * * *

(1) *Membership.* The Board shall consist of the DA&M, OSD, who shall serve as the Chair; the Director of the Defense Privacy Office, DA&M, who shall serve as the Executive Secretary and as a member; The representatives designated by the Secretaries of the Military Departments; and the following officials or their designees: The Deputy Under Secretary of Defense for Program Integration (DUSD(PI)); the Assistant Secretary of Defense for Health Affairs; the Assistant Secretary of Defense for Networks and Information Integration (ASD(NII)/Chief Information Officer (CIO); the Director, Executive Services and Communications Directorate, Washington Headquarters Services (WHS); the GC, DoD; and the Director for Information Technology Management Directorate (ITMD), WHS. The designees also may be the principal point of contact for the DoD Component for privacy matters.

* * * * *

(b) * * *

(1) *Membership.* The Board shall consist of the DA&M, OSD, who shall serve as the Chair; the Director of the Defense Privacy Office, DA&M, who shall serve as the Executive Secretary; and the following officials or their designees: The representatives designated by the Secretaries of the Military Departments; the DUSD(PI); the ASD(NII)/CIO; the GC, DoD; the Inspector General, DoD; the ITMD, WHS; and the Director, Defense Manpower Data Center. The designees also may be the principal points of contact for the DoD Component for privacy matters.

* * * * *

(c) * * *

(1) The Committee shall consist of the Director, Defense Privacy Office, DA&M, who shall serve as the Chair and the Executive Secretary; the GC, DoD, or designee; and civilian and/or military counsel from each of the DoD Components. The General Counsels (GCs) and The Judge Advocates General of the Military Departments shall determine who shall provide representation for their respective Department to the Committee. This does not preclude representation from each office. The GCs of the other DoD Components shall provide legal representation to the Committee. Other DoD civilian or military counsel may be appointed by the Executive Secretary, after coordination with the DoD

Component concerned, to serve on the Committee on those occasions when specialized knowledge or expertise shall be required.

* * * * *

(d) *The Defense Privacy Office.*

(1) * * *

(vi) Review proposed DoD Component privacy rulemaking, to include submission of the rule to the Office of the Federal Register for publication and providing OMB and the Congress reports, consistent with 5 U.S.S. 552a, OMB Circular A-130, and DoD 5400.11-R.

* * * * *

(x) Compile and submit the "Biennial Matching Activity Report" to the OMB as required by OMB Circular A-130 and DoD 5400.11-R, and such other reports as required.

* * * * *

Dated: August 31, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05-17646 Filed 9-6-05; 8:45 am]

BILLING CODE 5001-08-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[IB Docket No. 05-254; FCC 05-152]

Modifying the Commission's Process To Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document is a summary of the Notice of Inquiry that was adopted by the Commission. The Notice of Inquiry seeks comment on ways to address a developing concern in the U.S.-international telecommunications market: the use of circuit blockages or disruptions by foreign carriers as a way to compel U.S. carriers to agree to settlement rate increases. The record developed by this Notice on Inquiry would assist the Commission in determining whether to propose changes to current Commission policy and procedure in order to ensure that U.S. consumers benefit from competitive prices as they make international calls.

DATES: Submit comments on or before October 7, 2005, and submit reply comments on or before October 27, 2005.

FOR FURTHER INFORMATION CONTACT:

Peggy Reitzel or Francis Gutierrez, Policy Division, International Bureau, (202) 418-1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry* in IB Docket No. 05-254, FCC 05-152, which was adopted on August 5, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. The document may also be downloaded from the Commission's Web site at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-152A1.doc. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., in person at 445 12th Street, SW., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM.

Summary of the Notice of Inquiry

On August 5, 2005, the Commission adopted a *Notice of Inquiry* on Modifying the Commission's Process to Avert Harm to U.S. Competition and U.S. Customers Caused by Anticompetitive Conduct. By this *Notice of Inquiry*, the Commission seeks to develop a record on ways to improve the process available to the Commission to protect U.S. consumers from the effect of anticompetitive conduct by foreign carriers and on alternative approaches the Commission may take to avert circuit disruptions or blockages.

In particular, this *Notice of Inquiry* seeks comment on the following issues: (1) What constitutes a circuit disruption or blockage that would trigger possible Commission action; (2) what should be the appropriate length of the pleading cycle associated with any action the Commission may take in response to reports of anticompetitive behavior on the part of foreign carriers; (3) whether the Commission should propose procedures for taking interim measures when U.S. carriers notify the Commission that foreign carriers have threatened to disrupt circuits; (4) how should the Commission assess the immediacy of such threats, and how should it coordinate any action with the appropriate U.S. government agencies; (5) what showing is required of U.S. carriers to demonstrate that the public interest will be served by Commission intervention, and what is the appropriate form of relief; (6) whether U.S. carriers are passing through settlement rate reductions to U.S.

consumers; and (7) whether it is appropriate for U.S. ratepayers to subsidize universal service in other countries.

The Commission encourages all interested parties to respond to the questions and requests set forth in the *Notice of Inquiry*.

Ordering Clauses

Pursuant to the authority contained in 47 U.S.C. 151, 4(i), 201-205, 208, 211, 303(r), 403 this *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. 05-17795 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 64**

[CG Docket No. 02-386; DA 05-2266]

Rules and Regulations Implementing the Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on proposed modifications/clarifications to rules governing the exchange of customer account information between local and long distance carriers.

DATES: Comments are due on or before September 22, 2005, and reply comments are due on or before October 3, 2005.

ADDRESSES: You may submit comments, identified by CG 02-386, DA 05-2266 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Kelli Farmer, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418-2512 (voice), Kelli.Farmer@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, DA 05-2266, released August 9, 2005. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554, (202) 418-0270. This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site: <http://www.bcpweb.com> or by calling 1-800-378-3160.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format) send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This document can also be downloaded in Word or Portable Document Format (PDF) at <http://www.fcc.gov/cgb/policy>.

When filing comments, please reference CG Docket No. 02-386, DA 05-2266. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must send an original and four (4) copies of each filing. Filings can be sent by hand or messenger delivery, by electronic media, by commercial

overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW-B204, Washington, DC 20554. This proceeding shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules, 47 CFR 1.1200. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 CFR 1.1206(b).

Synopsis

On February 25, 2005, the Commission adopted mandatory, minimum standards governing the exchange of customer account information between local exchange carriers (LECs) and interexchange carriers (IXCs). In adopting these mandatory, minimum standards, the Commission relied in large measure on a compromise proposal that was filed with the Commission by a coalition of IXCs and LECs, including representatives of AT&T, MCI, Sprint, BellSouth, Qwest, SBC, and Verizon (Coalition).

On April 15, 2005, and June 15, 2005, the Coalition proposed modifications and clarifications to the *Order* (final rules published at 70 FR 32258, June 2,

2005). In particular, the Coalition identified certain aspects of section 64.4002 of the Commission's rules that, in its view, should be clarified and/or modified by the Commission "in the interest of clarity and completeness." The Coalition's proposed clarifications and modifications to section 64.4002 are described immediately below:

- Among the categories of information that LECs must provide to IXCs in certain identified situations, section 64.4002(a)(6), (b)(6), (d)(5) and (f)(5) currently include the "carrier identification code of the submitting LEC." The Coalition suggests that this phrase should be modified to state "carrier identification code of the IXC." According to the Coalition, this "mirroring" of information back to the IXC by the LEC serves as a kind of "handshake" and is needed to confirm that the LEC has properly identified the intended recipient of a particular notification.

- The Coalition asks the Commission to modify section 64.4002(d). In particular, it proposes that a LEC that has received a notification from an IXC indicating that the IXC's customer no longer wishes to be presubscribed to any IXC (customer has selected "no-PIC" status) be required to respond to the IXC with a confirmation or reject notification. As proposed by the Coalition, section 64.4002(d) would read in pertinent part:

(d) *Customer contacts LEC or new IXC to change PIC, or current IXC to select no-PIC.* When a LEC has removed at its local switch a presubscribed customer from an IXC's network, in response to a customer order, upon receipt of a properly verified PIC order submitted by another IXC, or upon receipt of the current IXC's request to change the PIC to no-PIC, the LEC must notify the customer's former IXC of this event.

- The Coalition proposes modifications to section 64.4002(e) and (g) to make those subsections consistent with other notification obligations of LECs adopted in the *Order*. First, it asks the Commission to modify section 64.4002(e) to include the effective date of a change to a customer's local service account as well as the carrier identification code of the IXC. Second, the Coalition asks the Commission to modify subsection (g) to include the customer's billing telephone number, working telephone, and billing name and address; the effective date of the change of local service provider; a description of the customer type (i.e., business or residential); the jurisdictional scope of the lines or terminals affected (i.e., intraLATA and/or interLATA and/or international); and

the carrier identification code of the IXC.

- The Coalition suggests an additional clarification to section 64.4002(g) whereby the Commission would insert the phrase "in LEC" and remove the word "new" as specified in the bracketed portions of the following sentence: "If the customer also makes a PIC change, the customer's former LEC must notify the customer's former PIC(s) of the change [*in LEC*] and the new LEC must notify the customer's [~~new~~] PIC of the customer's PIC selection."

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act requires that an initial regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

On March 25, 2004, the Commission released a *Notice of Proposed Rulemaking (NPRM)* seeking public comment on whether the Commission should establish mandatory, minimum standards governing the exchange of customer account information between local exchange carriers and interexchange carriers. As required by the RFA, the Commission incorporated into the *NPRM* an Initial Regulatory Flexibility Analysis (*IRFA*) and sought public comment on the specific issues raised in the *IRFA*. Two entities filed comments addressing the *IRFA*. On February 25, 2005, the Commission adopted the *Order* which, as discussed above, established extensive and detailed standards governing the exchange of customer account information between local exchange carriers and interexchange carriers. Consistent with the RFA, the Commission incorporated into the *Order* a Final Regulatory Flexibility Analysis (*FRFA*) addressing, among other things, the comments that had been filed in response to the *IRFA*.

In this document, the Commission seeks comment on the Coalition's

proposed clarifications and modifications to § 64.4002 of the Commission's rules. The proposed clarifications and modifications are in the nature of technical corrections to the Commission's customer account record exchange rules that, if adopted, would not have a significant economic impact on entities subject to those rules. For example, the Coalition asserts that its proposed modification to § 64.4002(d) would make this provision consistent with similar notification requirements adopted in the *Order* simply by requiring a LEC to confirm its receipt of a particular IXC-initiated notification with an appropriate response. The Coalition similarly proposes modifications to §§ 64.4002(e) and (g) to include within the information exchanges prescribed by those subsections, the same standard categories of information that carriers routinely must provide in connection with other notification obligations adopted in the *Order*. If the Commission were to adopt the proposed modifications and clarifications, we believe that the compliance burden, and resulting economic impact on entities subject thereto, would be *de minimus*. Therefore, the Commission certifies for purposes of the RFA that the proposals in this document, if adopted, will not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of this document, including a copy of this Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the SBA. This initial certification will also be published in the **Federal Register**.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-17704 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-2300, MM Docket No. 00-9, RM-9526]

Radio Broadcasting Services; Beaumont and Dayton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: At the request of Liberman Broadcasting of Houston License Corp., the Audio Division dismisses a rulemaking petition to reallocate and

change the community of license for Station KQQK(FM), Channel 300C, from Beaumont to Dayton, Texas, and terminates this rulemaking proceeding. See 65 FR 4401, January 27, 2000. The withdrawal of the rulemaking petition complies with Section 1.420(j) of the Commission's rules. See also **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Andrew J. Rhodes, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00-9, adopted August 17, 2005, and released August 19, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

A continuing interest is required before a channel will be allotted. Because the rulemaking petition and the expression of interest in the proposed allotment at Dayton have been withdrawn, no allotment at Dayton or change of community of license will be made.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-17521 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU22; 1018-AI48

Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl From the Federal List of Endangered and Threatened Wildlife; Proposal To Withdraw the Proposed Rule To Designate Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we will hold a public hearing (see **DATES** and **ADDRESSES** sections) on our proposed rule to remove the Arizona distinct population segment (DPS) of the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) from the Federal List of Endangered and Threatened Wildlife, eliminate its currently designated critical habitat, and to withdraw its proposed new critical habitat. This public hearing will allow all interested parties an opportunity to comment on our proposed actions.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES**) on or before October 3, 2005, or at the public hearing. Any comments received after the closing date may not be considered in the final determination on the proposal.

We will hold a public hearing on September 20, 2005, from 6:30 p.m. to 9 p.m.

ADDRESSES: *Public Hearing.* The public hearing will be held in Tucson, Arizona, at the Tucson Convention Center, Apache—Greenlee meeting rooms, 260 South Church Avenue, Tucson, AZ 85710.

Comments. If you wish to provide comments/and or information, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information by mail or hand-delivery to the Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, Arizona 85021.

2. Written comments may be sent by facsimile to (602) 242-2513.

3. You may send your comments by electronic mail (e-mail) to: cfpo_comments@fws.gov.

For directions on how to submit electronic comments, as well as information on requesting reasonable accommodations to attend the public hearing, see the "Public Comments Solicited" section below.

FOR FURTHER INFORMATION CONTACT:

Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602-242-0210; facsimile, 602-242-2513; or electronic mail, *steve_spangle@fws.gov*). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

The Arizona DPS of the pygmy-owl was listed as endangered on March 10, 1997 (62 FR 10730), and critical habitat was designated on July 12, 1999 (64 FR 37419). On January 9, 2001, a coalition of plaintiffs filed a lawsuit with the District Court of Arizona challenging the validity of our listing of the pygmy-owl as a DPS and the designation of its critical habitat. After the District Court of Arizona remanded the designation of critical habitat (*National Association of Home Builders et al. v. Norton*, Civ.-00-0903-PHX-SRB), we proposed a new critical habitat designation on November 27, 2002 (67 FR 7102). Ultimately, as a result of this lawsuit, the United States Court of Appeals for the Ninth Circuit issued an opinion on August 19, 2003, stating that "the FWS acted arbitrarily and capriciously in designating the Arizona pygmy-owl population as a DPS under the *DPS Policy*" (*National Association of Home Builders v. Norton*, 340 F. 3d 835, 852 (9th Cir. 2003)). In making DPS determinations, we rely upon the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments (*DPS Policy*) (61 FR 4722).

In light of the Ninth Circuit's opinion, we have reassessed the application of the DPS significance criteria to the Arizona pygmy-owl. Based on our assessment, we do not believe that the available information and science satisfy the criteria to indicate that pygmy-owls in Arizona are an entity that qualifies for listing under the Act. Accordingly, we published a proposed rule on August 3, 2005 (70 FR 44547) to remove the Arizona population of pygmy-owls from the list in 50 CFR 17.11, remove the critical habitat designation for this population at 50 CFR 17.95, and withdraw our November 27, 2002, proposed rule to designate

new critical habitat. This document notifies the public that we are holding a public hearing on our August 3, 2005, proposed rule (see **DATES** and **ADDRESSES**).

Public Comments Solicited

We intend that any final action resulting from the proposal will be based on the best available information. We have gathered and evaluated new information related to the pygmy-owl that has become available since the 1997 listing and are seeking any other pygmy-owl information. We will continue to support surveys of pygmy-owls in Mexico to further elucidate the status of the species in Mexico, and to identify threats to the population.

We are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Comments should be as specific as possible. We are particularly interested in comments concerning:

- (1) Biological, genetic, and/or morphological data related to the taxonomic classification of the pygmy-owl throughout its current range;
- (2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current population status;
- (3) Additional information related to current versus historical range, current distribution, genetic diversity, and population sizes of the Arizona pygmy-owl population and its contribution to the taxon as a whole;
- (4) Status of the pygmy-owl in Mexico, particularly threats to populations or habitat; and
- (5) Information related to discreteness, significance, and conservation status of any potential pygmy-owl DPS.

All previous comments and information submitted on the proposed rule need not be resubmitted. We will take into consideration the comments and any additional information received, and such communications may lead to a final determination that differs from the proposal.

If you wish to provide comments and/or information, you may submit your comments and materials concerning the proposal by any one of several methods (see **ADDRESSES**). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII file format), and should not use special characters or any form of encryption. Please also include "Attn: Cactus Ferruginous Pygmy Owl Delisting," your full name, and your

return address in the body of your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Arizona Ecological Services Field Office (see **ADDRESSES**).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office (see **ADDRESSES**).

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding the proposal is available in alternative formats upon request.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 30, 2005.

Kevin R. Adams,

Acting Director, U.S. Fish and Wildlife Service.

(Endangered and Threatened Wildlife and Plants; Proposed Rule to Remove the Arizona Distinct Population Segment of the Cactus Ferruginous Pygmy-owl From the Federal List of Endangered and Threatened Wildlife; Proposal to Withdraw the Proposed Rule to Designate Critical Habitat and to Remove Designated Critical Habitat)

[FR Doc. 05-17754 Filed 9-1-05; 5:07 pm]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants: Notice of Receipt of an Application for an Incidental Take Permit (ITP) and Availability and Opening of Comment Period for a Draft Environment Assessment (EA) Habitat Conservation Plan (HCP) for the West Virginia Northern Flying Squirrel in Association With Snowshoe Mountain, Incorporated, Pocahontas County, WV**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: This notice advises the public that Snowshoe Mountain, Incorporated (SMI) has applied to the U.S. Fish and Wildlife Service (Service) for an ITP pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), as amended. The application has been assigned permit number TE-102380. The proposed permit would authorize the incidental take of a federally endangered species, the West Virginia northern flying squirrel (WVNFS) (*Glaucomys sabrinus fuscus*), known to occur throughout the property owned by the applicant at Snowshoe Mountain Resort, Pocahontas County, West Virginia. The proposed taking is incidental to a planned recreation and infrastructure expansion project on approximately 43 acres owned by SMI. The permit would be in effect for up to 10 years depending on completion of the proposed activities.

The Service announces the receipt of the SMI ITP application and the availability of the proposed Recreation and Infrastructure Expansion at Snowshoe Mountain HCP which accompanies the ITP application, for public comment. In addition, the Service also announces the availability of a draft EA for the proposed issuance of the ITP. This notice is provided pursuant to the section 10(c) of the ESA and National Environmental Policy Act of 1969 (NEPA) regulations (40 CFR 1506.6).

The Service will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of NEPA regulations and section 10(a) of the ESA. If it is determined that the requirements are met, a permit will be issued for the incidental take of the WVNFS. The final NEPA and permit determinations will

not be completed until after the end of the 60-day comment period and will fully consider all public comments received during the comment period.

DATES: Written comments on the permit application, HCP, and EA should be sent to the Service's West Virginia Field Office (see **ADDRESSES**) and should be received on or before November 7, 2005.

ADDRESSES: Persons wishing to review the permit application, HCP, and draft EA may obtain a copy by writing to the Service's West Virginia Field Office, 694 Beverly Pike, Elkins, West Virginia 26241. Requests for the documentation must be in writing to be processed.

Written data or comments concerning the permit application, draft EA and/or HCP should also be addressed to the Field Office Supervisor, U.S. Fish and Wildlife Service, West Virginia Field Office, at the address above. Please refer to permit TE-102380 when submitting comments. Documents will also be available for public inspection by written request, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Chapman or Shane Jones, West Virginia Field Office (see **ADDRESSES**), 304-636-6586.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulation prohibits the "taking" of a species listed as endangered or threatened. Under the ESA, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to "incidentally take" listed species, if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are promulgated in 50 CFR 17.22.

Background

SMI has applied to the Service for an ITP pursuant to section 10(a) of the ESA. The applicant proposes to implement an HCP for the WVNFS that will allow construction within WVNFS habitat. The applicant's proposed activities may result in take, as defined in the ESA and its implementing regulations, of listed species. Authorized take would only affect WVNFS; take of other federally listed species is specifically excluded from the proposed action. This permit would authorize the incidental take of WVNFS at Snowshoe Mountain Resort through otherwise lawful activities, specifically the recreation and infrastructure expansion, occurring in WVNFS habitat.

The HCP and permit would be in effect for a maximum of 10 years upon issuance.

The applicant proposes to construct additional downhill ski slopes and expand an existing trail at Snowshoe, to accommodate the projected increase in skiers, particularly beginners and intermediate skiers, and the demand for skiable terrain. In connection with ski slope expansion, SMI proposes to complete a parking area expansion to alleviate traffic congestion as a result of the projected increased recreational use of the resort. Finally, SMI is proposing to develop an area in which to store some equipment, including snowplows, bulldozers, buses, trucks, earth graders, backhoes, and landscaping equipment. It is necessary to house this equipment in a centrally located area to ensure that heavy equipment traffic on the main road is minimized. The proposed activities are expected to remove approximately 43 acres of forest.

The anticipated incidental take will be limited to harm through habitat loss as the result of the permanent loss of 43 acres of suitable WVNFS habitat. SMI proposes to implement measures to minimize, mitigate, and monitor impacts to the WVNFS and include surveying for WVNFS, following seasonal clearing restrictions, allowing when possible, natural forest regeneration in temporary construction zones, and establishing a permanent conservation area to provide refuge for the WVNFS.

The draft EA considers the environmental consequences of three alternatives, including a no-action alternative, the proposed action, and a reduced impact alternative.

The Service provides this notice pursuant to section 10(c) of the ESA. The Service will evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the ESA by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the evaluation of the permit application, the HCP, EA, and comments submitted thereon, will be used in the final analysis to determine whether the application meets the requirements of section 10(a) of the ESA. If the requirements are met, the Service will issue a permit to SMI for the incidental take of WVNFS during the proposed recreation and infrastructure expansion activities. We will make the final permit decision no sooner than 60 days from the date of this notice.

Authority: The authority for this section is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 17, 2005.

Marvin E. Moriarty,

Regional Director, Region 5.

[FR Doc. 05-17672 Filed 9-6-05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 050405E]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Petition for Emergency Rulemaking for Red Snapper

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

ACTION: Denial of a petition for emergency rulemaking.

SUMMARY: NMFS announces its decision to deny a petition for emergency or interim rulemaking under the Administrative Procedure Act (APA) and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Coastal Conservation Association (CCA), a marine conservation group composed of approximately 90,000 members, petitioned the U.S. Department of Commerce to immediately promulgate an emergency or interim rule under the Magnuson-Stevens Act to prevent overfishing of red snapper resulting from bycatch in the shrimp trawl fishery of the Gulf of Mexico. NMFS finds the emergency or interim rulemaking is not warranted, and additional management measures to end overfishing of red snapper would better be addressed through a Gulf of Mexico Fishery Management Council (Council) regulatory amendment and development of a fishery management plan (FMP) amendment.

ADDRESSES: Copies of the NMFS decision on the CCA petition are available from Phil Steele, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone: 727-824-5305, and via internet at: <http://sero.nmfs.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Phil Steele, Fishery Administrator, NMFS, Southeast Regional Office; telephone: 727-824-5305; e-mail: phil.steele@noaa.gov.

SUPPLEMENTARY INFORMATION: CCA filed a petition for emergency or interim

rulemaking on March 29, 2005. NMFS published a notice of receipt of petition for rulemaking on May 12, 2005 (70 FR 39700), and invited public comments for 60 days ending July 11, 2005. Summaries of and responses to comments are provided in the Response to Public Comments section below.

The Petition

The petition filed by CCA states the red snapper stock in the Gulf of Mexico is overfished and undergoing overfishing. Although the petition acknowledges the directed red snapper commercial and recreational sectors share responsibility for rebuilding the stock, it asserts the failure of bycatch reduction devices (BRDs) required in the commercial shrimp fishery to meet established bycatch reduction standards makes recovery of the Gulf red snapper fishery unlikely and ensures years of continued overfishing of this stock. The petition states the directed recreational and commercial red snapper sectors have already adopted many measures necessary to rebuild the stock. The petition seeks emergency regulations or interim measures to stop the overfishing resulting from excessive bycatch of juvenile red snapper in the Gulf shrimp fishery. The petition also suggests management measures such as bag limits and total allowable catch restrictions would be applicable to the directed red snapper fishery.

The CCA petition states the prevention of overfishing and recovery of the red snapper stock is predicated on at least a 44-percent reduction from the average level of bycatch mortality on juvenile red snapper, age 0 and age 1, by the Gulf shrimp fishery during the years 1984-1989. Further, because recent research indicates current BRD use, in practice, yields only a 12-percent bycatch reduction, CCA argues that the existing plan for preventing overfishing and rebuilding the red snapper stock must be declared a failure. CCA asserts the fisheries regulatory establishment is plainly aware of red snapper overfishing by the shrimp trawl fishery, but has failed to take corrective action. The petition requests NMFS immediately initiate emergency regulations or interim measures resulting in bycatch reduction sufficient to allow the red snapper stock to rebuild within the time period established in the Reef Fish Fishery Management Plan (Reef Fish FMP). The petition states such bycatch reduction measures should include strict bycatch quotas tracked by observer data, time and area closures or restrictions, improved BRDs, season limitations, seasonal closures, and/or other

reduction measures. In addition, the petition states a firm bycatch reduction target of 60-80 percent of historic levels should be set, with a time line to achieve the target within the shortest period possible. The petition also proposes a mandated effort reduction program for the Gulf shrimp fleet.

History of NMFS and Council Efforts to Reduce Bycatch in the Shrimp Fishery

Efforts to rebuild the red snapper stock are complicated by significant amounts of bycatch in the shrimp fishery. Ending overfishing and allowing the stock to rebuild cannot occur through regulations on the directed red snapper fishery alone. The shrimp fishery annually removes 25 to 45 million juvenile red snapper (approximately 2-5 million lb (0.9-2.3 million kg)), primarily from the western Gulf, whereas the directed fishery removes approximately 4 million adult fish (approximately 9 million lb (4.1 million kg)) annually. The success of the red snapper rebuilding plan depends heavily on reductions in shrimp trawl bycatch.

The Council recognized the inherent need to reduce red snapper bycatch in the shrimp fishery in 1997 when they approved Amendment 9 to the Shrimp Fishery Management Plan (Shrimp FMP). The purpose of this amendment was to reduce unwanted bycatch of juvenile red snapper in the shrimp fishery and, to the extent practicable, not adversely affect the shrimp fishery. Because of substantial fishing mortality on juvenile red snapper and the need to rebuild the overfished stock, the Council considered development and use of BRDs and other management measures to reduce bycatch. The Council approved a goal for reducing red snapper bycatch by 44 percent from the average annual mortality of age-0 and age-1 red snapper during 1984-1989. Upon approval of Amendment 9, the fisheye BRD and Andrews Turtle Excluder Device (Andrews TED) were the only two devices determined to be capable of reducing bycatch by the required amount; however, the Andrews TED was proposed to be certified as a BRD only during a time when and in a geographical area where it is an approved TED. On December 19, 1997, approval of the Andrews TED, as a TED, was withdrawn; therefore, the Andrews TED was not certified as a BRD in the final rule implementing Amendment 9. However, the framework procedure approved by the Council in Amendment 9 allowed for additional BRDs to be certified by NMFS. Cooperative industry/government research available in 1997 indicated the approved BRDs

would reduce red snapper bycatch by 58 to 77 percent.

In 1998, an intensive monitoring effort quantified the effectiveness of the mandatory use of certified BRDs and evaluated the effectiveness of uncertified BRDs. The study found there were performance problems with the fisheye BRD in some configurations, and regulations were amended to modify the allowable placement of the fisheye BRD to improve performance and bycatch reduction. In 1999, BRD testing and certification procedures were established, and two new BRDs, the Jones-Davis BRD and "Gulf" fisheye BRD, were certified by NMFS after determining they exceeded the bycatch reduction goal. Available data in 1999 indicated these BRDs reduced red snapper mortality by 52 to 70 percent.

Monitoring the performance of BRDs in the fishery continued through an observer program from 1999 to 2003, during which time the Council began development of a regulatory amendment, and subsequently Amendment 22 to the Reef Fish FMP. The Council submitted a rebuilding plan to NMFS through a regulatory amendment in 2001. This amendment was returned to the Council by NMFS with a request to further explore alternative rebuilding plans based on realistic expectations for future reductions in shrimp trawl bycatch, and to more fully evaluate the effects of alternatives to reduce bycatch through a supplemental environmental impact statement. In 2004, the Council approved Amendment 22, which established a rebuilding plan for red snapper based on the results of the 1999 stock assessment. The rebuilding plan was projected to end overfishing by 2009 or 2010, and rebuild the stock by 2032. The amendment called for large reductions in bycatch mortality from the shrimp fishery to be achieved either through technological means, such as improved BRD designs, and/or reductions in shrimp fishing effort. The selected rebuilding plan recognized the need for periodic reviews of the stock status to ensure the rebuilding plan was adequately progressing toward the rebuilding goal. Review of the plan was designed to incorporate new information and to address unanticipated developments in the red snapper and shrimp fisheries, and to make appropriate adjustments in red snapper regulations should insufficient or unexpectedly rapid rebuilding progress occur.

In May 2004, the Council was presented with the results of the ongoing BRD observer study mentioned above. This study indicated BRDs,

under actual fishing conditions, were reducing red snapper bycatch by 11.7 percent, which was far less than previously documented during research trials. The study noted several changes in fishing practices and gear characteristics (e.g., increased haulback speeds, illegal BRD placement) reduced the performance of the fisheye BRD, the most commonly used BRD in the shrimp fishery. Results from a majority of trips where observers were aboard revealed BRDs were often placed in illegal net positions, resulting in poor BRD performance. However, BRD performance also was noted to be poor for legal installations due largely to alterations in fishing practices.

The results of this BRD observer study were incorporated into the 2005 red snapper stock assessment, which concluded red snapper continued to be overfished and undergoing overfishing. The conclusions of the assessment were consistent with previous assessments despite changes in stock status criteria and assessment methods. The Southeast Data, Assessment, and Review (SEDAR) Assessment Review Panel concluded red snapper fishing mortality rates are too high for both the directed fishery and shrimp fishery, and reductions in fishing mortality for both sectors would be needed to rebuild the stock.

Response to Assertions and Proposed Management Measures Set Forth in the Petition

NMFS disagrees with CCA's assertion that management has failed to take action to address the problem of shrimp trawl bycatch of red snapper. As new information and research have become available, NMFS and the Council have taken corrective action to improve BRD performance and reduce shrimp trawl bycatch. Changes in both fishing practices and gear characteristics have significantly reduced the overall performance of BRDs relative to bycatch reduction rates previously documented during field trials. NMFS recognizes the success of the rebuilding plan is heavily dependent on reductions in shrimp trawl bycatch and effort. Amendment 22 acknowledged additional reductions in bycatch may be required in the future if reductions are not adequate through technological improvements. The Council also specified a periodic review of the rebuilding plan in order to make appropriate adjustments in red snapper regulations when new information, such as the most recent stock assessment and BRD performance research, became available.

NMFS agrees with CCA's assertion that existing certified BRDs are now not achieving established reduction

standards and additional reductions in shrimp trawl bycatch are needed to rebuild the stock. The rebuilding plan calls for large reductions in shrimp effort to occur through technological means and reductions in shrimp effort. Current BRD observer studies indicate only a 12-percent reduction in red snapper bycatch is occurring, which is well below the reduction needed to rebuild the stock. However, as indicated in Amendment 22 to the Reef Fish FMP, reductions in shrimp trawl bycatch are occurring as a result of reduced fishing effort associated with adverse economic conditions in the shrimp fishery resulting from increased competition from shrimp imports and rising fuel costs. Future declines in shrimp effort are predicted for large shrimp vessels (greater than or equal to 60 ft (18.3 m) in length). Such declines are likely to increase the rate of red snapper stock rebuilding and reduce fishing related bycatch in the early years of the rebuilding plan, aside from any management actions to reduce harvest. Since 2002, an 18-percent decrease in shrimp effort has occurred. Shrimp effort has decreased by 26-percent since the late 1980s, resulting in lower fishing mortality rates on juvenile red snapper in more recent years.

Based on the most recent stock assessment, fishing mortality rates in all sectors of the fishery are too high, and the Council will need to consider reducing fishing mortality rates to rebuild the stock. As explained in the Agency Decision section of this notice, NMFS believes actions to revise the red snapper rebuilding plan and reduce shrimp trawl bycatch are best addressed through Council regulatory amendment and FMP amendment, rather than emergency rule. The Council directed staff during their August 2005 Council meeting to begin immediately working on a regulatory amendment to modify certification procedures and protocols for BRDs, including decertification of ineffective BRDs and certification of new BRDs capable of achieving necessary reductions in finfish bycatch. The Council also directed staff to begin developing a joint reef fish/shrimp plan amendment that revises the red snapper rebuilding plan and addresses bycatch in both the directed red snapper fishery and shrimp fishery. NMFS agrees many of the measures proposed by CCA to address shrimp trawl bycatch should be considered in the plan amendment.

NMFS and the Council have already begun to address effort limitation in the shrimp fishery and monitoring of shrimp bycatch. In May 2005, the Council approved Amendment 13 to the Shrimp FMP. This amendment, if

approved by NMFS, would establish a moratorium on shrimp licenses and allow for closer monitoring of the shrimp fishery in two ways. First, electronic logbook reporting, which tracks fishing effort (number of trips, length of trips, locations, etc.), would be required for commercial shrimp vessel permit holders. Second, the observer program would include bycatch reporting which will produce estimates of total annual finfish and invertebrate bycatch. The Council believes these actions will provide the best information to track effort and evaluate bycatch and modified BRD performance without unduly interfering with shrimp fishery operations. NMFS expects that Amendment 13, if approved, would be implemented early in 2006. The level of coverage for monitoring bycatch through the use of electronic logbooks and observers may vary with the availability of funding. Until such time as additional funding is available, management measures such as bycatch quotas would be impractical to consider for the shrimp fishery.

The Council previously considered area and seasonal closures for reducing finfish bycatch in Amendments 9 and 10 to the Shrimp FMP. The Council rejected these measures because they were deemed costly and ineffective, and research at the time indicated BRDs reduced bycatch at a lower cost. Current regulations include several seasonal and area closures throughout the Gulf of Mexico in which trawling is prohibited. Trawl gear is also precluded from numerous areas throughout the Gulf because of oil and gas platforms, hard bottom habitat, and artificial reefs. The intent of existing seasonal and area closures is to protect small shrimp and habitat and reduce user conflicts. These closures were not intended to reduce bycatch, although this is an indirect benefit of these management actions.

The Council considered a scoping document for Amendment 14 to the Shrimp FMP at their August 2005 meeting. The scoping document contained alternatives for further reducing shrimp bycatch, reducing shrimp effort, modifying bycatch reduction criteria, eliminating latent effort in the shrimp fishery, and requiring vessel monitoring systems aboard shrimp vessels. NMFS will continue to work closely with the Council to further develop a joint Shrimp and Reef Fish plan amendment evaluating these shrimp fishery bycatch alternatives, as well as alternatives for rebuilding the red snapper stock and reducing bycatch in the directed red snapper fishery.

The petition also proposes setting a firm target for bycatch reduction of between 60 and 80 percent of historic levels, with a time line established to achieve the target within the shortest period possible. NMFS believes the target bycatch reduction goal should be set based on the results of the most recent stock assessment, taking into account the time needed to rebuild the stock and the practicability of further reductions in shrimp trawl bycatch.

Response to Comments

NMFS received 7,630 form letters in favor of the petition to end overfishing of red snapper by minimizing shrimp trawl bycatch. NMFS received an additional 23 letters in response to the petition. Of those 23 letters, 12 commenters supported the petition, and 11 commenters urged the petition be rejected or denied. NMFS' responses to these comments are provided below.

Comment 1: A group of commenters stated the Federal government has failed to end overfishing of red snapper by the shrimp fishery despite legal requirements, and significant action is necessary to reduce bycatch and restore the red snapper stock.

Response: The 2005 red snapper stock assessment indicated red snapper were overfished and undergoing overfishing. NMFS agrees action is needed to reduce bycatch in both the shrimp fishery and the directed red snapper fishery. Despite previous actions by NMFS and the Council to improve BRD performance and reduce shrimp trawl bycatch of red snapper, as explained in the History of NMFS and Council Efforts to Reduce Bycatch in the Shrimp Fishery section of this document, overfishing has continued. Changes in both fishing practices and gear characteristics have significantly reduced the overall effectiveness of BRDs relative to the bycatch reduction rates documented during field trials. The Council recognized the need to address such changes during rebuilding by periodically reviewing the status of the stock to ensure the rebuilding plan is adequately meeting rebuilding goals. Should insufficient or unexpectedly rapid rebuilding progress occur, NMFS and the Council intend to make appropriate adjustments to regulations to address unanticipated developments in the red snapper and shrimp fisheries.

Comment 2: Eight commenters in favor of the petition stated the shrimp fishery has impacted the recreational fishery economically and hindered further economic gains the recreational sector could experience.

Response: NMFS recognizes bycatch increases the mortality of any species

over what would otherwise occur due to natural mortality and any directed fishery for that species. As such, this additional mortality reduces the potential harvest and economic activity associated with that species. This situation is not unique to shrimp trawl bycatch and recreational fisheries. In addition to requiring bycatch be reduced to the extent practicable, the Magnuson-Stevens Act requires management measures provide for the sustained participation of fishing communities. This requirement recognizes the sociocultural importance of fisheries and the impracticability of reducing all values associated with a resource to monetary terms. Thus, current regulations in the shrimp fishery have been developed to both minimize bycatch and maintain the fishing communities depending upon this fishery as well as other related fisheries.

Comment 3: Several commenters indicated the petition failed to address the recent decrease in shrimp effort and its effects on reducing red snapper bycatch. These commenters identified four reasons for reductions in shrimp effort: (1) The cap on the number of commercial shrimp licenses has decreased participation in the fishery to a huge degree; (2) the required use of TEDs and BRDs has made it more difficult for license holders to make a living; (3) fuel costs have increased drastically, and, (4) the amount of imported, farm-raised shrimp has been increasing and is unfairly driving down the price of domestic shrimp.

Response: NMFS agrees the petition did not address recent decreases in shrimp effort, nor the aforementioned reasons for that effort reduction. These reductions in effort have been factored into recent management actions for shrimp and red snapper, including Amendment 13 to the Shrimp FMP, Amendment 22 to the Reef Fish FMP, and the 2005 red snapper stock assessment. Although some individuals may dispute effort estimates, these estimates were thoroughly reviewed during the 2004–2005 SEDAR workshops for red snapper and are considered the best available scientific information. Analyses predict reductions in the number of large vessels (>60 ft (>18.3 m)), which primarily operate in offshore waters and are expected to encounter more red snapper than smaller vessels, will be the primary source of future reductions in shrimp trawl bycatch. Between 2002 and 2004, offshore shrimp effort was predicted to decline by 16 percent; actual reductions in shrimp effort during this time declined by 18 percent. Projections indicate effort for large

shrimp vessels will continue to decline significantly through 2011, ending at a point 34 percent less than effort levels in 2002.

The Council approved Amendment 13 to the Shrimp FMP at their May 2005 meeting. If approved by NMFS, this amendment will establish several management measures, including a moratorium on commercial shrimp permits. NMFS has yet to implement the cap on commercial shrimp licenses and, therefore, the cap has not reduced participation in the shrimp fishery to date.

The use of TEDs and BRDs has likely made it more difficult for some shrimpers to make a living. TEDs and BRDs not only reduce finfish and turtle bycatch, they also result in some shrimp loss, which economically impacts the profits of shrimpers. When the Council approved Amendment 9 to the Shrimp FMP in 1997, research indicated BRDs reduced bycatch at a lower cost than other management measures, such as seasonal and area closures. Recent NMFS observer data indicate many shrimpers have changed fishing practices and gear characteristics to reduce shrimp loss; as a result, BRD performance has decreased.

The declining profitability of the shrimp industry is attributed to lower prices, due to competition from imports, and to higher fuel prices, which increased 21–29 percent from 2002 to 2003. Fuel costs represent a significant portion of the industry's operating expenses, and fluctuations in fuel costs can significantly affect the industry's economic performance. Increases in shrimp imports have been the primary cause of the recent decline in U.S. shrimp prices. Recent surges in imports have been caused by increases in the production of foreign, farm-raised shrimp.

Comment 4: One commenter stated the petition was based on old information and new information is now available. The commenter stated the new information was incorporated into the new assessment, but was not acknowledged in the petition, and taking action would be imprudent until completion of the new assessment.

Response: NMFS concurs that it would be prudent to wait for the findings of the new assessment before taking action. A red snapper stock assessment was completed in 2005 and represents the best available science regarding the current status of the stock. NMFS believes additional management measures to achieve reductions in bycatch mortality should take into account the results of this stock assessment and would best be addressed

by the Council through regulatory amendment and development of a plan amendment. The Council discussed the results of the 2005 red snapper stock assessment at their August 2005 meeting and requested the NMFS Southeast Fisheries Science Center begin evaluating rebuilding scenarios for red snapper and the necessary shrimp trawl bycatch reductions associated with the scenarios.

Comment 5: Several commenters stated the impact of recreational fishing was not acknowledged in the petition, and this fishing was a huge factor in the red snapper decline.

Response: The petition acknowledges recovery of the red snapper stock is not based on bycatch reduction alone. However, the petition states the directed recreational and commercial fisheries have already adopted many management measures in an effort to rebuild the red snapper stock. Based on the most recent stock assessment, red snapper fishing mortality rates in both the directed fishery and the shrimp fishery are too high and each sector must share responsibility for rebuilding the stock.

Comment 6: One commenter stated the growth of offshore recreational fishing boats has had a huge impact on red snapper and all other reef fish species. Another commenter asserted recreational bag limits for red snapper are regularly exceeded with no penalties, and this was the primary problem with management of the stock.

Response: NMFS agrees the number of recreational fishing vessels and fishing effort have increased in recent years. Despite this increase in fishing effort and vessels, red snapper landings have been at or near the 4.47-million lb (2.03-million kg) quota. Recreational landings overages have occurred in some years, but landings have also been well below the quota during other years. Management measures imposed by the Council and NMFS, such as bag limits, closed seasons, size limits, and a moratorium on for-hire vessel permits, are intended to limit overall red snapper landings and effort. The U.S. Coast Guard, NMFS Law Enforcement, and state enforcement agencies enforce these regulations, and penalties exist if regulations are violated.

Comment 7: One commenter asserted the bycatch of undersized red snapper by recreational fishermen is substantial.

Response: NMFS agrees bycatch of undersized fish in the directed fishery should be addressed. The 2005 red snapper stock assessment used a range of release mortality rates for the directed commercial and recreational red snapper fisheries. These release

mortality rates ranged from 15 to 80 percent depending on depth and time fished. The Council has begun developing a plan amendment to address bycatch in both the directed red snapper fishery and shrimp fishery.

Comment 8: One commenter stated studies show the importance of protecting large spawners to ensure red snapper sustainability, and implied recreational fishing has a much greater effect on these large fish than commercial fishing, such as longlining.

Response: NMFS agrees it is important to protect mature red snapper. Red snapper mature as early as 2 years of age and 10–12 inches (25–30 cm) fork length. They do not reach peak reproductive productivity until approximately 15 to 20 years of age. Current fishing practices directly affect the reproductive potential of the stock because red snapper are primarily caught well below the age at maximum fecundity. The commercial longline fishery typically harvests older red snapper (mean age of 7–8 years), while the commercial and recreational handline fisheries harvest younger red snapper (mean age of 2 to 4 years). However, the commercial longline fishery accounts for only a small portion of the overall commercial harvest of red snapper (less than 4 percent of the overall commercial harvest).

Agency Decision

After considering the assertions and proposed management measures set forth in the CCA petition and all public comments, NMFS has determined the measures requested by the petition should not be addressed via emergency or interim rulemaking at this time. NMFS agrees bycatch mortality of red snapper in the Gulf shrimp fleet adversely affects red snapper and its ability to rebuild. NMFS believes it is important to address bycatch mortality of red snapper by the shrimp fleet, but this issue does not represent an emergency as defined in NMFS policy guidance for the use of emergency rules (62 FR 44421, August 21, 1997). Overfishing of red snapper is not an unforeseen event and, therefore, does not constitute an emergency.

Interim measures can be useful to address recently discovered issues for which no long-term strategies have been devised. However, NMFS believes long-term measures are more appropriate than interim measures to address overfishing of red snapper. The Council and NMFS have established, and are in the process of implementing, a long-term rebuilding plan for red snapper to phase-out overfishing by 2009 or 2010 and rebuild the fishery by 2032, as

defined in the Magnuson-Stevens Act (§ 303(e)(4)). As anticipated in the rebuilding plan, implementation includes periodic adjustments based on new scientific information. The 2005 red snapper stock assessment indicates the level of reduction necessary to eliminate overfishing is dependent on the objectives and rebuilding scenario selected. The Council will need to evaluate those factors carefully prior to taking action to implement appropriate reductions to end overfishing and rebuild the stock.

Finally, emergency and interim regulations are not appropriate for addressing such actions as changes to BRDs, because these changes would require substantial time for gear development, manufacturing, and training and distribution for re-outfitting of shrimp nets. Emergency and interim measures can only be implemented for 180 days and can be extended for an additional 180 days if necessary conditions are met. It is likely that such measures would result in a regulatory lapse before longer-term measures could be implemented.

NMFS believes additional management measures to achieve reductions in bycatch mortality should take into account the results of the most recent red snapper stock assessment and would best be addressed through Council regulatory amendment and development of a plan amendment. The Council directed staff during their August 2005 Council meeting to begin immediately working on a regulatory amendment to modify certification procedures and protocols for BRDs, including decertification of ineffective BRDs and certification of new BRDs capable of achieving necessary reductions in finfish bycatch. This regulatory amendment is expected to be completed in mid-2006. The Council also directed staff to begin developing a joint reef fish and shrimp plan amendment that revises the red snapper rebuilding plan and addresses bycatch in both the directed red snapper fishery and shrimp fishery. This plan amendment is expected to be completed by late-2006. By addressing bycatch mortality, management measures, and the red snapper rebuilding plan in this way, the public will be afforded more opportunities to comment and participate in the rulemaking process, and long-term measures to address the issues can be implemented.

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

Dated: August 31, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 05-17713 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 051603C]

RIN 0648-AQ65

Atlantic Highly Migratory Species; Amendments to the Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks and the FMP for Atlantic Billfish

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

ACTION: Cancelling and changing the location and time of certain public hearings.

SUMMARY: Due to the damage caused by Hurricane Katrina, NMFS is cancelling two public hearings on the draft consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and proposed rule that were scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, respectively. NMFS intends to reschedule the September 6 Orange Beach and September 8 New Orleans public hearings at a later date. In addition, NMFS has changed the location and time of the public hearing that was scheduled to be held in Fort Lauderdale, FL, on October 3, 2005, at the African American Arts and Cultural Center Research Library. The draft consolidated HMS FMP and the proposed rule describe a range of management measures that could impact fishermen and dealers for all HMS fisheries.

DATES: The Fort Lauderdale public hearing will still be held on Monday, October 3, 2005. However, the new time will be from 7 - 10 p.m. The hearings scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, have been cancelled and will be rescheduled at a later date.

ADDRESSES: The new location of the Fort Lauderdale public hearing will be the Broward County Main Library, 100 South Andrews Avenue, Fort Lauderdale, FL 33301.

FOR FURTHER INFORMATION CONTACT: Heather Stirratt or Karyl Brewster-Geisz at (301) 713-2347.

SUPPLEMENTARY INFORMATION: The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The FMP for Atlantic Tunas, Swordfish, and Sharks, finalized in 1999, and the FMP for Atlantic Billfish, finalized in 1988, are implemented by regulations at 50 CFR part 635.

On August 19, 2005 (70 FR 48804), NMFS published a proposed rule that, among other things, announced the availability of the draft consolidated HMS FMP. Included in this proposed rule was a list of 24 public hearings throughout September and October 2005. These hearings are scheduled for NMFS to receive comments from fishery participants and other members of the public regarding the proposed rule and draft HMS FMP. Due to the damage caused by Hurricane Katrina, NMFS is cancelling two public hearings that were scheduled for September 6 and September 8, 2005, in Orange Beach, AL, and New Orleans, LA, respectively. NMFS intends to reschedule the public hearings once the amount of damaged caused by Hurricane Katrina in the affected Gulf region has been assessed and the appropriate locations can be determined. NMFS may extend the comment period, if necessary, to ensure adequate opportunities for public comment by constituents in the affected Gulf region. Notification of the new dates and locations would be published in the **Federal Register**.

In addition, NMFS has changed the location and time of the public hearing that was scheduled to be held in Fort Lauderdale, FL, on October 3, 2005, at the African American Arts and Cultural Center Research Library (see **DATES** and **ADDRESSES**). This change was due to concerns raised by a constituent regarding public safety. NMFS verified these concerns with local law enforcement. The schedule for the other public hearings remains unchanged.

The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a NMFS representative will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not

interrupt one another). The NMFS representative will attempt to structure the hearing so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Heather Stirratt, (301) 713-2347, at least 7 days prior to the hearing in question.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: September 1, 2005.

John H. Dunnigan,

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

[FR Doc. 05-17749 Filed 9-1-05; 4:03 pm]

BILLING CODE 3510-22-S

Notices

Federal Register

Vol. 70, No. 172

Wednesday, September 7, 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

Submission for OMB Review; Comment Request

August 31, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

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

OMB Control Number: 0579-0115.

Summary of Collection: The Laboratory Animal Welfare Act (AWA) (Pub. L. 89-544) enacted August 24, 1966, and amended December 24, 1970 (Pub. L. 91-579); April 22, 1976 (Pub. L. 94-279); and December 23, 1985 (Public Law 99-198) requires the U.S. Department of Agriculture (USDA) to regulate the humane care and handling of most warm-blooded animals, including marine mammals, used for research or exhibition purposes, sold as pets, or transported in commerce. This legislation and its amendments were the result of extensive demand by organized animal welfare groups and private citizens requesting a Federal law to protect such animals. USDA, Animal and Plant Health Inspection Service (APHIS), Animal Care (AC) has the responsibility to enforce the Animal Welfare Act and the provisions of 9 CFR, Chapter 1, Subchapter A, which implements the Animal Welfare Act. APHIS will collect information through the use of reports and records that are kept for a period of at least one year to ensure that the animals are cared for in the prescribed manner that is required by regulations.

Need and Use of the Information: APHIS will collect information to ensure compliance with the regulations intended to ensure the humane care and treatment of marine mammals. Without the information, none of the knowledge could be obtained from records, animal health certification would be at risk, and animals exposed to inadequate handling and care could not be properly documented.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2,197.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Semi-annually.

Total Burden Hours: 9,750.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 05-17647 Filed 9-6-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV-05-301]

United States Standards for Grades of Strawberries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is soliciting comments on its proposal to revise the United States Standards for Grades of Strawberries. Based on a request from the California Strawberry Commission (CSC), AMS is proposing to modify the standards to allow that percentages be determined by count rather than volume. The proposed revision will make tolerance determination more objective and uniform.

DATES: Comments must be received by November 7, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250-0240; Fax (202) 720-8871, E-mail FPB.DocketClerk@usda.gov. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Strawberries are available either through the address cited above or by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrrfv.htm>.

FOR FURTHER INFORMATION CONTACT: Cheri L Emery, at the above address or call (202) 720-2185, E-mail Cheri.Emery@usda.gov.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture “To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.” AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Strawberries using procedures that appear in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1965.

Background

AMS received a request from the CSC requesting a revision to the United States Standards for Grades of Strawberries to allow that percentages be determined by count rather than volume.

Prior to undertaking research and other work associated with a revision of the grade standards, AMS decided to seek public comments on the request. On March 11, 2005, AMS published a notice in the **Federal Register** (70 FR 12175) soliciting comments on a possible revision to the United States Standards for Grades of Strawberries.

In response to our request for comments, AMS received five comments from industry groups. Four comments were in favor of the revision to the standard and one comment was opposed. The comments are available by accessing AMS’s Home Page on the Internet at: <http://www.ams.usda.gov/fv/fpbdoCKETlist.htm>.

The one comment opposing the revision stated, “To change to a count-based system would treat berries of varying sizes equally. This may be more expeditious, but from our perspective reduces the relevance and effectiveness of USDA inspections.” By changing to a count basis each berry will represent the same percentage of the container regardless of the size of the berry. Currently, each inspector must determine the volume of each berry in relation to the container based on a

visual estimation. Modifying the standards to allow that percentages be determined by count will provide more objectivity to an inspection.

AMS received four comments in favor of the revision. Those in favor of the revision stated the proposed rule change follows changing industry practices and market demand by replacing a subjective volume determination, with a more preferred and easily understood objective measurement.

AMS believes the proposed revision to allow percentages to be determined by count rather than volume would establish a clear uniform procedure for determining the percentages. Additionally, AMS is proposing to eliminate the unclassified category. This section is being removed in all standards, when they are revised. This category is not a grade and only serves to show that no grade has been applied to the lot. It is no longer considered necessary.

The official grade of a lot of strawberries covered by these standards is determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides a 60-day comment period for interested parties to comment on changes to the standard.

Authority: 7 U.S.C. 1621–1627.

Dated: September 1, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–17708 Filed 9–6–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–04–306]

United States Standards for Grades of Watermelons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice; request for public comment.

SUMMARY: The Agricultural Marketing Service (AMS), of the Department of Agriculture is soliciting comments on its amended proposal to revise the United States Standards for Grades of Watermelons. AMS received a petition from the National Watermelon Association (NWA), amending a portion of their original petition. NWA’s amended petition is requesting that seedless watermelons be defined as:

“Watermelons which have 10 or less mature seeds, not to include pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut).” NWA’s original petition requested that a variance be added to the size requirements. This request remains unchanged.

DATES: Comments must be received by November 7, 2005.

ADDRESSES: Interested persons are invited to submit written comments to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 1661 South Building, Stop 0240, Washington, DC 20250–0240; Fax (202) 720–8871, E-mail

FPB.DocketClerk@usda.gov. Comments should make reference to the dates and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours. The United States Standards for Grades of Watermelons are available either through the address cited above or by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/standfrfv.htm>.

FOR FURTHER INFORMATION CONTACT:

Cheri L. Emery, at the above address or call (202) 720–2185; E-mail *Cheri.Emery@usda.gov*.

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture “To develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.” AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements no longer appear in the Code of Federal Regulations, but are maintained by USDA/AMS/Fruit and Vegetable Programs.

AMS is proposing to revise the voluntary United States Standards for Grades of Watermelons using procedures that appear in part 36, title 7 of the Code of Federal Regulations (7 CFR part 36). These standards were last revised in 1978.

Background

AMS received two petitions from the NWA requesting a revision to the United States Standards for Grades of Watermelons. In the first petition, the NWA requested that the USDA revise the standards by defining seedless watermelons as: "Seedless Watermelons" are watermelons which have 16 or less mature seeds, not to include pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut). The petitioner also requested the size requirements be revised by adding an allowance for watermelons to vary 3 pounds above the stated average weight.

Prior to undertaking research and other work associated with a revision of the grade standards, AMS decided to seek public comments on the petition. A notice requesting comments on the petition to revise the United States Standards for Grades of Watermelons was published in the April 22, 2004, **Federal Register** (69 FR 21812).

In response to our request for comments, AMS received one comment from an industry group. The comment was in favor of the proposed revision of the standards.

On October 29, 2004, AMS published a notice in the **Federal Register** (69 FR 209) proposing to revise the standards based on the petitioner request to define seedless watermelons and add a variance to the size requirements.

A 60-day comment period was provided for interested parties to comment on the proposed changes to the standards.

In response to our request for comments, AMS received two comments on the proposed revision. One from an industry group representing receivers and one comment from a consumer. Both commenters supported the inclusion of a definition for seedless watermelons with a lower number of allowable seed count. The commenter representing receivers supported the inclusion of a 3 pound variance in the size requirements, while the other commenter supported a 1 pound variance. The comments are available by accessing AMS's Home Page on the Internet at: <http://www.ams.usda.gov/fv/fpbdoctlist.htm>.

After the comment period ended, AMS received a second petition from the NWA amending the seedless watermelon definition in their original petition. The amended petition is requesting that seedless watermelons be defined as: "Watermelons which have 10 or less mature seeds, not to include

pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut)." NWA did not amend their petition in regard to the inclusion of a the 3 pound variance.

Based on the submitted information and comments received, AMS is proposing to revise the standards for watermelons following the standard format for U.S. Grade Standards. Specifically, the proposed revision will define seedless watermelons by including the following definition: "Seedless Watermelons" are watermelons which have 10 or less mature seeds, not to include pips/caplets, on the face of the melon which has been cut into four equal sections (one lengthwise cut and one crosswise cut).

AMS is also proposing to change the size requirements by adding an allowance for watermelons to vary 3 pounds above the stated average weight. As previously stated, one commenter recommended a 1 pound variance rather than 3 pound variance. However, AMS is proposing to change the size requirements by adding an allowance for watermelons to vary 3 pounds above average weight as the standard currently allows watermelons to vary 3 pounds below the stated weight, therefore the inclusion would be consistent within the standards.

This proposal will bring the standards for watermelons in line with current marketing practices, thereby, improving the usefulness of the standards in serving the industry. The official grade of a lot of watermelons covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

This notice provides for a 60-day comment period for interested parties to comment on changes to the standards.

Authority: 7 U.S.C. 1621-1627.

Dated: September 1, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05-17709 Filed 9-6-05; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Forest Service

Gold Camp Road Final Plan/ Environmental Impact Statement and Record of Decision

AGENCY: Forest Service, USDA.

ACTION: Notice of availability and decision.

SUMMARY: In accordance with the National Environmental Policy Act, the Pike National Forest of the Rocky Mountain Region of the Forest Service announces availability of the Final Plan and Final Environmental Impact Statement (Final Plan/EIS) and Record of Decision (ROD) for the Gold Camp Road. The Forest Service is also announcing the agency's decision to restore and reopen a collapsed railroad tunnel and reopen a closed section of Gold Camp Road to one-way traffic, with a third party partner to operate the segment of road (Modified Alternative E). The objective of the management plan for the road is to best accommodate public use and access to National Forest System lands and nearby private in-holdings while maintaining public safety and the historic character of the road. The affected road segment has been closed since 1988 for safety reasons.

DATES: The appeal period for the decision will be 45 days from the date the Environmental Protection Agency (EPA) publishes the notice of availability and decision in the **Federal Register**. The notice of availability will be published in the **Federal Register** on September 9, 2005.

ADDRESSES: The Final Plan/EIS and ROD are available on the Internet at http://www.fs.fed.us/r2/psicc/projects/gold_camp/. Copies of the Final Plan/EIS and ROD may be obtained by contacting the Pikes Peak Ranger District, 601 S. Weber St., Colorado Springs, CO 80903. Notice of Appeal must be sent to: USDA-Forest Service, Rocky Mountain Region, Attn: Appeals Deciding Officer, P.O. Box 25127, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Frank Landis, Supervisory Outdoor Recreation Planner, Pikes Peak Ranger District, at the address listed above or by telephone at 719-477-4203.

SUPPLEMENTARY INFORMATION: The Final Plan/EIS and ROD are also available for inspection at the following public libraries in Colorado:

Penrose Public Library—20 N. Cascade Ave., Colorado Springs, CO 80903
East Library—5550 N. Union Blvd., Colorado Springs, CO 80918

The Forest Service announced in the **Federal Register** (69 FR 39401, June 30, 2004) that the agency intended to prepare an EIS addressing the possible federal action of preparing a plan for the Gold Camp Road and inviting comments on the scope of the EIS. Comments were received from April 12 through August

17, 2004 and were considered in the Draft Plan/EIS.

Notices of availability were published in the **Federal Register** for the Gold Camp Road Draft Plan/EIS by the Forest Service (70 FR 2605, January 14, 2005) and the EPA (70 FR 4119, January 28, 2005). Comments were accepted on the Draft Plan/EIS through March 29, 2005. Comments were considered and the Final Plan/EIS was prepared based on agency and public input. The Final Plan/EIS contains a new preferred alternative that incorporates elements of three of the other action alternatives.

A ROD accompanies the Final Plan/EIS. The ROD accompanying the Final Plan/EIS is subject to appeal pursuant to 36 CFR 215.

Reviewers are obligated to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewer's position and contentions, [*Vermont Yankee Nuclear Power Corp. v. NRDS*, 435 U.S. 519, 553, (1978)]. Environmental objections that could have been raised at the draft stage may be waived if not raised until after completing the Final EIS [*City of Angoon v. Hodel* (9th Circuit 1986) and *Wisconsin Heritages Inc. v. Harris* 490 F. Suppl. 1334, 1338 (E.D. Wis. 1980)].

This notice is provided pursuant to federal regulations implementing the National Environmental Policy Act (40 CFR 1506.6).

Dated: August 30, 2005.

Robert J. Leaverton,

Forest Supervisor.

[FR Doc. 05-17711 Filed 9-6-05; 8:45 am]

BILLING CODE 3410-11-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alaska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Alaska State Advisory Committee in the Western Region will convene at 10 a.m. (PDT) and adjourn at 11 a.m., Thursday, September 29, 2005. The purpose of the conference call is to discuss ongoing projects and plan future activities.

This conference call is available to the public through the following call-in number: 1-800-473-8694, access code number 44001081. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines

and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894-3437, by 3 p.m. on Wednesday, September 28, 2005.

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

Dated at Washington, DC, August 31, 2005.

Ivy L. Davis,

*Acting Chief, Regional Programs
Coordination Unit.*

[FR Doc. 05-17702 Filed 9-6-05; 8:45 am]

BILLING CODE 6335-01-P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Hawaii State Advisory Committee in the Western Region will convene at 2 p.m. (PDT) and adjourn at 3 p.m., Friday, September 30, 2005. The purpose of the conference call is to discuss on-going projects and plan future activities.

This conference call is available to the public through the following call-in number: 1-800-473-7796, access code number 44001094. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1-800-977-8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894-3437, by 3 p.m. on Thursday, September 29, 2005.

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

Dated at Washington, DC, August 31, 2005.

Ivy L. Davis,

*Acting Chief, Regional Programs
Coordination Unit.*

[FR Doc. 05-17703 Filed 9-6-05; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-851-802, A-485 805, A-588-851, A-791-808]

Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 ½ inches) from the Czech Republic, Japan, Romania, and South Africa; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On May 2, 2005, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain carbon and alloy seamless standard, line, and pressure pipe (under 4 ½ inches) (seamless pipe) from the Czech Republic, Japan, Romania, and South Africa pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and no response from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to the continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482-1391.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department initiated sunset reviews of the antidumping duty orders on seamless pipe from the Czech Republic, Japan,

Romania, and South Africa pursuant to section 751(c) of the Act. *See Initiation of Five-year ("Sunset") Reviews*, 70 FR 22632 (May 2, 2005). The Department received notices of intent to participate from two domestic interested parties, United States Steel Corporation (U.S. Steel) and Koppel Steel Corporation (Koppel Steel) (collectively, domestic interested parties), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. Domestic interested parties claimed interested party status under section 771(9)(C) of the Act as U.S. producers of the domestic like product. We received complete substantive responses from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, we did not receive any response from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of these orders.

Scope of the Orders

The products covered by the orders are seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes and redraw hollows produced, or equivalent, to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and the API 5L specifications and meeting the physical parameters described below, regardless of application. The scope of the orders also includes all products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification. Specifically included within the scope of the orders are seamless pipes and redraw hollows, less than or equal to 4.5 inches (114.3 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to the orders are currently classifiable under the subheadings 7304.10.10.20, 7304.10.50.20, 7304.31.30.00, 7304.31.60.50, 7304.39.00.16, 7304.39.00.20, 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.51.50.05, 7304.51.50.60, 7304.59.60.00, 7304.59.80.10, 7304.59.80.15, 7304.59.80.20, and 7304.59.80.25 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Seamless pressure pipes are intended for the conveyance of water,

steam, petrochemicals, chemicals, oil products, natural gas and other liquids and gases in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A-106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various ASME code stress levels. Alloy pipes made to ASTM A-335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A-106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A-106 standard.

Seamless standard pipes are most commonly produced to the ASTM A-53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A-333 or ASTM A-334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification.

Seamless water well pipe (ASTM A-589) and seamless galvanized pipe for fire protection uses (ASTM A-795) are used for the conveyance of water.

Seamless pipes are commonly produced and certified to meet ASTM A-106, ASTM A-53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers.

The primary application of ASTM A-106 pressure pipes and triple or quadruple certified pipes is use in pressure piping systems by refineries, petrochemical plants, and chemical plants. Other applications are in power generation plants (electrical-fossil fuel or nuclear), and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and

metering runs. A minor application of this product is for use as oil and gas distribution lines for commercial applications. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A-106 pipes may be used in some boiler applications.

Redraw hollows are any unfinished pipe or "hollow profiles" of carbon or alloy steel transformed by hot rolling or cold drawing/ hydrostatic testing or other methods to enable the material to be sold under ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications.

The scope of the orders includes all seamless pipe meeting the physical parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the specific exclusions discussed below, and whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of the orders. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below. For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A-106 applications. These specifications generally include ASTM A-161, ASTM A-192, ASTM A-210, ASTM A-252, ASTM A-501, ASTM A-523, ASTM A-524, and ASTM A-618. When such pipes are used in a standard, line, or pressure pipe application, with the exception of the specific exclusions discussed below, such products are covered by the scope of the orders.

Specifically excluded from the scope of the orders are boiler tubing and mechanical tubing, if such products are not produced to ASTM A-53, ASTM A-106, ASTM A-333, ASTM A-334, ASTM A-335, ASTM A-589, ASTM A-795, and API 5L specifications and are not used in standard, line, or pressure pipe applications. In addition, finished and unfinished oil country tubular goods (OCTG) are excluded from the scope of the orders, if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are

included in this scope when used in standard, line or pressure applications.

With regard to the excluded products listed above, the Department will not instruct U.S. Customs and Border Protection (CBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being used in a covered application. If such information is provided, we will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in covered applications as described above. For example, if, based on evidence provided by petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-161 specification is being used in a standard, line or pressure application, we will require end-use certifications for imports of that specification. Normally we will require only the importer of record to certify to the end use of the imported merchandise. If it later proves necessary for adequate implementation, we may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the merchandise subject to this scope is dispositive.

Analysis of Comments Received

All issues raised in these cases are addressed in the "Issues and Decision Memorandum" from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, (Decision Memorandum), which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the orders are revoked. Parties can find a complete discussion of all issues raised in these sunset reviews and the corresponding recommendations in this public memorandum, which is on file in room B-099 of the main Department building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov>, under the heading "September 2005." The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on pipe fittings from the Czech Republic, Japan, Romania, and South Africa would likely lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| Manufacturers/Exporters/Producers | Weighted-Average Margin (Percent) |
|--|-----------------------------------|
| Czech Republic. | |
| Nova Hut, A.S. | 39.93 |
| All Others | 32.26 |
| Japan. | |
| Nippon Steel Corporation | 106.07 |
| Kawasaki Steel Corporation | 106.07 |
| Sumitomo Metal Industries, Ltd. | 106.07 |
| All Others | 70.43 |
| Romania. | |
| Metal Business International S.R.L. | 11.08 |
| S.C. Petrotub S.A. | 11.08 |
| S.C. Silcotub S.A. | 15.15 |
| Sota Communication Company .. | 15.15 |
| All Others | 13.06 |
| South Africa. | |
| Iscor Ltd. | 43.51 |
| All Others | 40.17 |

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4868 Filed 9-6-05; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

(A-580-816)

Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from petitioners, the Department of Commerce (the Department) is conducting the eleventh administrative review of the antidumping order on corrosion-resistant carbon steel flat products (CORE) from Korea.¹ This review covers five manufacturers and exporters (collectively, the respondents) of the subject merchandise: Dongshin Special Steel Co., Ltd., (Dongshin); Dongbu Steel Co., Ltd. (Dongbu); Hyundai HYSCO (HYSCO); Pohang Iron & Steel Company, Ltd. and Pohang Coated Steel Co., Ltd. (POCOS), and Pohang Steel Industries Co., Ltd. (PSI) (collectively, the POSCO Group); and Union Steel Manufacturing Co., Ltd. (Union). The period of review (POR) for this review is August 1, 2003, through July 31, 2004. We preliminarily determine that during the POR, Dongbu, the POSCO Group, and Union made sales of subject merchandise at less than normal value (NV). However, we preliminarily determine that HYSCO did not make sales of subject merchandise at less than NV (*i.e.*, sales were made at "zero" or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (CBP) to assess HYSCO's appropriate entries at an antidumping liability of zero percent of the entered value and instruct CBP to assess Dongbu, Dongshin, the POSCO Group, and Union at the rates referenced in the "Preliminary Results of the Review" section of this notice.

Furthermore, we are rescinding the request for review of the antidumping order for SeAH Steel Corporation (SeAH) because SeAH and its affiliates did not have exports or sales in the United States of subject merchandise manufactured or produced by SeAH during the POR. Because Dongshin failed to respond to the Department's questionnaire, we preliminarily

¹ Petitioners are the Mittal Steel USA ISG, Inc., United States Steel Corporation, and Nucor Corporation.

determine to resort to adverse facts available to determine Dongshin's dumping margin. Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the issues and (2) a brief summary of the comments.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT:

Jolanta Lawska (Union), Preeti Tolani (Dongbu), Victoria Cho (the POSCO Group), and Joy Zhang (HYSCO), AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-8362, (202) 482-0395, (202) 482-5075, and (202) 482-1168, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1993, the Department published the antidumping order on CORE from Korea. See *Antidumping Duty Orders on Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea*, 58 FR 44159 (August 19, 1993) (*Orders on Certain Steel from Korea*). On August 3, 2004, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 46496 (August 3, 2004). On August 31, 2004, petitioners requested a review of Dongbu, Dongshin, HYSCO, the POSCO Group, SeAH, and Union. The Department initiated this review on September 22, 2004. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 56745 (September 22, 2004).

During the most recently completed segments of the proceeding in which Dongbu, HYSCO, the POSCO Group, and Union participated, the Department disregarded sales below the cost of production (COP) that failed the cost test.² Therefore, pursuant to section

773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (the Act), we had reasonable grounds to believe or suspect that sales by these companies of the foreign like product under consideration for the determination of NV in this review were made at prices below the COP. We instructed Dongshin, Dongbu, HYSCO,³ the POSCO Group, and Union to respond to sections A–D of the initial questionnaire,⁴ which we issued on November 1, 2004.

On April 7, 2005, the Department published an extension of preliminary results of the eleventh administrative review until August 31, 2005. See *Corrosion Resistant Carbon Steel Flat Products From Korea: Extension of Time Limits for the Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 17648 (April 7, 2005).

Rescission of Administrative Review for SeAH

On November 29, 2004, SeAH submitted a letter certifying that neither SeAH nor its affiliates exported or sold in the United States subject merchandise manufactured or produced by SeAH during the POR. We conducted an internal customs data query on August 1, 2005. The data query indicated that SeAH and its affiliates did not have entries of subject merchandise manufactured or produced by SeAH into the United States during the POR. See August 10, 2005, *Internal Customs Data Query* memorandum to the file from the team, which is available in the Central Records Unit (CRU) room B099 in the main Department of Commerce building.

Dongshin

Dongshin failed to respond to the initial questionnaire sent by the Department on November 1, 2004. On January 5, 2005, the Department sent a follow up letter to Dongshin inquiring whether it intended to respond to the Department's initial questionnaire and indicating that its failure to do so could result in the use of adverse facts available. Dongshin failed to respond to the questionnaire or to the January 5, 2005, letter.

³ In the previous segment the Department included a new shipper review of HYSCO. See *Preliminary Results from the 10th Review of CORE from KOREA*, 69 FR 54101 and *Final Results from the 10th Review of CORE from Korea*, 70 FR 12443.

⁴ Section A: Organization, Accounting Practices, Markets and Merchandise
Section B: Comparison Market Sales
Section C: Sales to the United States
Section D: Cost of Production and Constructed Value

Dongbu

On January 10, 2005, Dongbu submitted its sections A–C response to the initial questionnaire. On February 25, 2005, Dongbu submitted its section D response to the initial questionnaire. On June 9, 2005, Dongbu submitted its supplemental questionnaire response to the Department's May 17, 2005, questionnaire for sections A through D. On July 22, 2005, Dongbu submitted its second supplemental questionnaire response to the Department's July 1, 2005 questionnaire for sections B through D. On August 17, 2005, Dongbu submitted its third supplemental questionnaire response to the Department's August 3, 2005, supplemental questionnaire.

Union

On January 19, 2005, Union submitted its sections A–C responses to the initial questionnaire. On February 25, 2005, Union submitted its section D response to the initial questionnaire. On May 6, 2005, Union submitted its supplemental questionnaire response to the Department's April 8, 2005 questionnaire for sections A through C. On June 30, 2005, Union submitted its supplemental questionnaire response to the Department's June 3, 2005 questionnaire for section D. On August 17, 2005, Union submitted its second supplemental questionnaire response to the Department's August 3, 2005, questionnaire for sections A through D.

The POSCO Group

On January 31, 2005, the POSCO Group submitted its sections A through D response to the initial questionnaire. On June 23, 2005, the POSCO Group submitted its supplemental questionnaire response to the Department's May 25, 2005, questionnaire for sections A through D.

HYSCO

On January 10, 2005, HYSCO submitted its sections A through C response to the initial questionnaire. On April 12, 2005, HYSCO submitted its section D response to the initial questionnaire. On May 5, 2005, HYSCO submitted its supplemental questionnaire response to the Department's April 8, 2005 questionnaire for sections A through C. On July 15, 2005, HYSCO submitted its second supplemental questionnaire response to the Department's June 24, 2005 questionnaire for sections A through D. On August 9, 2005, HYSCO submitted a second supplemental questionnaire response to the Department's July 22, 2005 and August 3, 2005 questionnaires for section D.

² *Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Administrative Review and Antidumping Duty New Shipper Review*, 69 FR 54101, 54106-7 (September 7, 2004) (*Preliminary Results from the 10th Review of CORE from KOREA*); *Notice of Final Result of the Tenth Administrative Review and New Shipper of the Antidumping Duty Order on Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005) (*Final Results from the 10th Review of CORE from Korea*) and accompanying *Issues and Decisions Memorandum* (10th Review Decision Memo) at 10.

Period of Review

The POR covered by this review is August 1, 2003, through July 31, 2004.

Scope of the Order

This order covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in the order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process including products which have been beveled or rounded at the edges (i.e., products which have been "worked after rolling"). Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-

rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

These HTSUS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

Use of Adverse Facts Available

In accordance with section 776(a)(2) of the Act, the Department has determined that the use of facts available is appropriate for purposes of determining the preliminary dumping margins for the subject merchandise sold by Dongshin. Section 776(a)(2) of the Act provides in relevant part:

If an interested party (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(I) and (e) of section 782; (C) significantly impedes a proceeding under this subtitle; or (D) provides such information but the information cannot be verified as provided in section 782(I), the administering authority shall, subject to section 782(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

Moreover, section 776(b) of the Act provides in relevant part that:

If the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, the administering authority, in reaching the applicable determination under this subtitle, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

As explained above in the "Background" section of these preliminary results, Dongshin, despite the Department's repeated inquiries, failed to provide a response to the Department's initial questionnaire. Therefore, we have determined that Dongshin's failure to respond to the Department's questionnaire warrants the use of facts otherwise available pursuant to sections 776(a)(2)(A) and (C) of the Act. Furthermore, because of Dongshin's failure to respond to the Department's questionnaire and letter of January 5, 2005, we find that Dongshin failed to cooperate by not acting to the best of its

ability to comply with the Department's request for information. Accordingly, the Department is using an inference that is adverse to Dongshin in the preliminary results pursuant to section 776(b) of the Act. Specifically, as described below, we are using the highest calculated margin in this proceeding as AFA.

Section 776(c) of the Act provides that when the Department selects from among the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316 at 870 (1994) and 19 CFR 351.308(d). However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it does not question the reliability of the margin for that time period. See *Grain-Oriented Electrical Steel from Italy: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.

For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812, 6814 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's rate that was uncharacteristic of the industry, resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1223 (Fed. Cir. 1997) (the Department will not use

a margin that has been invalidated); see also *F. Lli De Cecco di Filippo v. United States*, 216 F.3d 1027 (Fed. Cir. 2000). Accordingly, for Dongshin we have resorted to adverse facts available and have used 17.70 percent,⁵ the highest margin upheld in this proceeding, as the margin for these preliminary results because there is no evidence on the record indicating that such a margin is not appropriate as adverse facts available. See *Orders on Certain Steel from Korea*.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all CORE products produced by the respondents, covered by the scope of the order, and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to CORE sold in the United States.

Where there were no sales in the ordinary course of trade of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondent, before making our fair-value comparisons.

Normal Value Comparisons

To determine whether sales of CORE by the respondents to the United States were made at less than NV, we compared the Export Price (EP) or Constructed Export Price (CEP) to the NV, as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice. In

⁵ This rate was a calculated rate based on the weighted-average margin for Pohang Iron and Steel, the sole respondent in the investigation of corrosion-resistant steel from Korea. See *Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 37176, 37191-2 (July 9, 1993); see also *Amendment of Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Korea*, 58 FR 41083, 41084 (August 2, 1993).

accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price/Constructed Export Price

We calculated the price of U.S. sales based on CEP, in accordance with section 772(b) of the Act. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d) of this section." (19 U.S.C. 1677a(b)). In contrast, section 772(a) of the Act defines "export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c) of this section." (19 U.S.C. 1677a(a)).

In determining whether to classify U.S. sales as either EP or CEP sales, the Department must examine the totality of the circumstances surrounding the U.S. sales process, and assess whether the reviewed sales were made "in the United States" for purposes of section 772(b) of the Act. In the instant case, the record establishes that Dongbu's, the POSCO Group's, Union's, and HYSCO's affiliates in the United States (1) took title to the subject merchandise and (2) invoiced and received payment from the unaffiliated U.S. customers for their sales of the subject merchandise to those U.S. customers. Thus, the Department has determined that these U.S. sales should be classified as CEP transactions.

For Dongbu, the POSCO Group, Union, and HYSCO, we calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. warehousing expenses, U.S. wharfage, U.S. inland freight, U.S. brokerage and handling, loading expenses, other U.S. transportation expenses, U.S. customs duties, commissions, credit expenses, letter of credit expenses, warranty expenses, other direct selling expenses, inventory carrying costs incurred in the United States, and other indirect selling

expenses in the country of manufacture and the United States associated with economic activity in the United States. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price.

In order to ensure that we have accounted for all appropriate U.S. interest expenses (*i.e.* both imputed and actual) without double-counting, we have utilized the following interest expense methodology. As in a previous review, in the U.S. indirect selling expenses, we have included net financial expenses incurred by the respondent's U.S. affiliates; however, we added U.S. interest expenses only after deducting U.S. imputed credit expenses and U.S. inventory carrying costs, so as to eliminate the possibility of double-counting U.S. interest expenses.⁶

Consistent with the Department's normal practice, we added the reported duty drawback to the gross unit price. We did so in accordance with the Department's long-standing test, which requires: (1) that the import duty and rebate be directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product. See *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results*, 65 FR 54197, 54202 (September 7, 2000) (*Preliminary Results of the 6th Review of CORE from Korea*).

Normal Value

Based on a comparison of the aggregate quantity of home market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(I) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offset,

⁶ See *Issues and Decision Memorandum for the Final Results of Antidumping Administrative Review of Cold-Rolled (CR) and Corrosion-Resistant (CORE) Carbon Steel Flat Products from Korea*, from Joseph A. Spetrini to Faryar Shirzad, Comment 1, (March 11, 2002) (Final Results of the 7th Administrative Review), on file in the CRU.

where applicable, by freight revenue), inland insurance, and packing. Additionally, we made adjustments to NV, where appropriate, for credit expenses (offset, where applicable, by interest income), warranty expenses, post-sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home market indirect selling expenses and inventory carrying costs to offset U.S. commissions.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in difference-in-merchandise adjustments exceeding 20 percent of the cost of manufacturing (COM) of the U.S. product, we based NV on constructed value (CV). See Policy Bulletin, Number 92.2, *Difmer 20% Rule*, July 29, 1992.

For purposes of calculating the NV, section 771(16) of the Act defines "foreign like product" as merchandise which is either (1) identical or (2) similar to the merchandise sold in the U.S. When there are no identical products sold in the home market, the products which are most similar to the product sold in the U.S. are identified. For the non-identical or most similar products which are identified based on the Department's product matching criteria, an adjustment is made to the home market sales price to account for the actual physical differences between the products sold in the U.S. and the home market or third country market. See 19 CFR 351.411 and section 773(a)(6)(C)(ii) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (LOT) as the CEP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive selling expenses, general, and administrative expenses (SG&A), and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examine stages in the marketing process and selling functions along the chain of distribution

between the producer and the unaffiliated (or arm's-length) customers. If the comparison-market sales are at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we will make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the differences in LOT between NV and CEP affected price comparability, we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-33 (November 19, 1997).

We did not make an adjustment under section 351.412(e) of the Department's regulations because, as there was only one home market level of trade for each respondent, we were unable to identify a pattern of consistent price differences attributable to differences in levels of trade (see 19 CFR 351.412(d)). Under section 351.412(f) of the Department's regulations, we are preliminarily granting a CEP offset for Dongbu, HYSCO, the POSCO group, and Union because NV for these companies are at a more advanced level of trade than the U.S. CEP sales.

For a detailed description of our LOT methodology and a summary of company-specific LOT findings for these preliminary results, see the August 31, 2005, company-specific calculation memoranda for Dongbu, HYSCO, the POSCO group, and Union, which are on file in the CRU.

Cost of Production/Constructed Value

A. Calculation of COP

We are investigating COP for Dongbu, HYSCO, the POSCO group, and Union because during the most recently completed segments of the proceeding in which Dongbu, HYSCO, the POSCO Group, and Union participated, the Department found and disregarded sales that failed the cost test. We calculated a company-specific COP for Dongbu, HYSCO, the POSCO Group, and Union based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, SG&A, and packing costs in accordance with section 773(b)(3) of the Act. We relied on Dongbu's, the POSCO Group's, Union's and HYSCO's information as submitted.

B. Major Input Rule

Pursuant to section 773(f)(2) and (3) of the Act and section 351.407(b) of the Department's regulations, the Department may value major inputs purchased from affiliated suppliers at the higher of the transfer price, the market price, or the affiliate's COP. HYSCO reported purchases of raw material input accounting for a significant portion of its total material cost from an affiliated supplier. We requested that HYSCO supply its affiliate supplier's COP information for the major material input. In HYSCO's letter dated July 12, 2005 and supplemental questionnaire response dated July 15, 2005, HYSCO indicated that, despite its repeated requests, its affiliated supplier has refused to provide the COP information. Where an interested party or any other person withholds necessary information that has been requested, the application of facts available is appropriate in reaching a determination, in accordance with section 776(a) of the Act. Under section 776(b) of the Act, we may use an inference adverse to the interests of an interested party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. In determining whether a respondent has acted to the best of its ability in seeking the COP information from its affiliate, the Department usually examines the nature of the affiliation, in addition to other facts. See *Certain Cut-to-Length Carbon Steel Plate from Brazil: Final Results of Antidumping Duty Administrative Review*, 63 FR 12744, 12751 (March 16, 1998) (*Plate from Brazil*). Given the nature of the affiliation, we determine that HYSCO made reasonable attempts to obtain the requested COP information from its affiliate. Therefore, we are not applying an adverse inference in selecting from the facts available.

In prior cases, we have turned to other COP information on the record, if available, as non-adverse "gap-filling" facts available. However, the record contains no other information about the affiliated supplier's COP. In prior cases, when there is no such COP data on the record and no indication that the affiliated supplier's COP is higher than the transfer or market price, we have used the higher of the transfer price or the market price as facts available. See *Plate from Brazil at 12751*; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber from the Republic of Korea*, 65 FR 16880 (March 30, 2000) and accompanying *Issues and Decision Memorandum* at Comment 6. As facts

available for the major input, we are using the market prices that HYSCO reported for its purchases of the major input from unaffiliated suppliers. See the August 31, 2005 *Calculation Memorandum for Hyundai HYSCO*, on file in the CRU.

C. Test of Home-Market Prices

In determining whether to disregard home-market sales made at prices below the COP, as required under sections 773(b)(1)(A) and (B) of the Act, we compared the weighted-average COP figures to home-market sales of the foreign like product and we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

D. Results of COP Test

Pursuant to section 773(b)(1) of the Act, we may disregard below COP sales in the determination of NV if these sales have been made within an extended period of time in substantial quantities and were not at prices which permit recovery of all costs within a reasonable period of time. Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP for at least six months of the POR, we determined that sales of that model were made in "substantial quantities" for an extended period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act. Where prices of a respondent's sales of a given product were below the per-unit COP at the time of sale and below the weighted-average per unit costs for the POR, we determined that sales were not at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

We tested and identified below-cost home market sales for Dongbu, Union, the POSCO Group, and HYSCO. We disregarded individual below-cost sales

of a given product of 20 percent or more and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. See the August 31, 2005 *Calculation Memorandum for Dongbu Steel Co., Ltd.*, *Calculation Memorandum for Hyundai HYSCO*; *Calculation Memorandum for Pohang Iron & Steel Company, Ltd. (POSCO)*, *Pohang Coated Steel Co., Ltd. (POCOS)*, and *Pohang Steel Industries Co., Ltd. (PSI) - (collectively, the POSCO Group)*; and *Calculation Memorandum for Union* which are on file in the CRU.

E. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, including interest expenses, U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the actual amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

Arm's Length Sales

The POSCO Group reported sales of the foreign like product to an affiliated reseller/service center. Dongbu and HYSCO also reported that they made sales in the home market to affiliated parties. The Department calculates NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's length. See 19 CFR 351.403(c).

To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we considered the sales to be at arm's-length prices. See 19 CFR 351.403(c). Conversely, where we found sales to the affiliated party did not pass the arm's-length test, all sales to that affiliated

party have been excluded from the NV calculation. *Id.*

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of this review, we preliminarily find that the following weighted-average dumping margins exist:

| Producer/Manufacturer | Weighted-Average Margin |
|-----------------------|-------------------------|
| Dongbu | 2.42% |
| Dongshin | 17.70% |
| HYSCO | 0.0 |
| The POSCO Group | 4.13% |
| Union | 2.19% |

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). Interested parties may submit case and rebuttal briefs. The Department will announce the due date of the case briefs at a later date. Rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on a diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisal instructions directly to CBP to assess antidumping duties on appropriate

entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. In instances where entered value was not reported, we calculated importer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing this amount by the total quantity of the sales examined. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* ratios based on export prices. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of CORE for Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of these reviews, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous review conducted by the Department, the cash deposit rate will be 17.70 percent, the "All Others" rate established in the underlying investigation. *See Orders on Certain*

Steel from Korea. These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: August 31, 2005.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4867 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-588-850, A-201-827)

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: On May 2, 2005, the Department of Commerce (the Department) initiated sunset reviews of the antidumping duty orders on certain large diameter carbon and alloy seamless standard, line and pressure pipe (Large Diameter SSLPP) from Japan and Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and no response from respondent interested parties, the Department conducted expedited (120-day) sunset reviews for these orders. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in

the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION Saliha Loucifi or David Goldberger, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1779 and (202) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On May 2, 2005, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on Large Diameter SSLPP from Japan and Mexico, pursuant to section 751(c) of the Act. *See Initiation of Five-year (Sunset) Reviews*, 70 FR 22632 (May 2, 2005). *See also Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516, 13522 (March 20, 1998). On May 17, 2005, the Department received the Notice of Intent to Participate from United States Steel Corporation (U.S. Steel) (the domestic interested party), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations. The domestic interested party claimed interested party status under section 771(9)(c) of the Act, as a manufacturer, producer, or wholesaler of the subject merchandise in the United States.

On June 1, 2005, we received complete substantive responses from the domestic interested party within the 30-day deadline specified in section 351.218(d)(3)(i) of the Department's Regulations. On the same day, Tubos de Aceros de Mexico, S.A. (TAMSA), the sole respondent in the investigation of Large Diameter SSLPP from Mexico, and the only known producer of subject merchandise in Mexico, submitted a waiver of participation.¹ In the sunset reviews of Large Diameter SSLPP from Mexico and Japan, the Department has not received any notice of intent to participate nor substantive response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(c)(2) of the Department's Regulations, the

¹ During the course of its investigation, the Department determined that Tubos de Aceros de Mexico, S.A. (TAMSA) was the sole producer of Large Diameter SSLPP in Mexico. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Mexico*, 65 FR 5587 (February 4, 2000).

Department conducted expedited (120-day) sunset reviews of these orders.

Scope of the Orders

The products covered by this order are large diameter seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipes produced, or equivalent, to the American Society for Testing and Materials (ASTM) A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and the American Petroleum Institute (API) 5L specifications and meeting the physical parameters described below, regardless of application, with the exception of the exclusions discussed below. The scope of this order also includes all other products used in standard, line, or pressure pipe applications and meeting the physical parameters described below, regardless of specification, with the exception of the exclusions discussed below.

Specifically included within the scope of this order are seamless pipes greater than 4.5 inches (114.3 mm) up to and including 16 inches (406.4 mm) in outside diameter, regardless of wall-thickness, manufacturing process (hot finished or cold-drawn), end finish (plain end, beveled end, upset end, threaded, or threaded and coupled), or surface finish.

The seamless pipes subject to this order are currently classifiable under the subheadings 7304.10.10.30, 7304.10.10.45, 7304.10.10.60, 7304.10.50.50, 7304.31.60.50, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.51.50.60, 7304.59.60.00, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, and 7304.59.80.70 of the Harmonized Tariff Schedule of the United States (HTSUS).

Specifications, Characteristics, and Uses: Large diameter seamless pipe is used primarily for line applications such as oil, gas, or water pipeline, or utility distribution systems. Seamless pressure pipes are intended for the conveyance of water, steam, petrochemicals, chemicals, oil products, natural gas, and other liquids and gasses in industrial piping systems. They may carry these substances at elevated pressures and temperatures and may be subject to the application of external heat. Seamless carbon steel pressure pipe meeting the ASTM A106 standard may be used in temperatures of up to 1000 degrees Fahrenheit, at various

American Society of Mechanical Engineers (ASME) code stress levels. Alloy pipes made to ASTM A335 standard must be used if temperatures and stress levels exceed those allowed for ASTM A106. Seamless pressure pipes sold in the United States are commonly produced to the ASTM A106 standard.

Seamless standard pipes are most commonly produced to the ASTM A53 specification and generally are not intended for high temperature service. They are intended for the low temperature and pressure conveyance of water, steam, natural gas, air and other liquids and gasses in plumbing and heating systems, air conditioning units, automatic sprinkler systems, and other related uses. Standard pipes (depending on type and code) may carry liquids at elevated temperatures but must not exceed relevant ASME code requirements. If exceptionally low temperature uses or conditions are anticipated, standard pipe may be manufactured to ASTM A333 or ASTM A334 specifications.

Seamless line pipes are intended for the conveyance of oil and natural gas or other fluids in pipe lines. Seamless line pipes are produced to the API 5L specification. Seamless water well pipe (ASTM A589) and seamless galvanized pipe for fire protection uses (ASTM A795) are used for the conveyance of water. Seamless pipes are commonly produced and certified to meet ASTM A106, ASTM A53, API 5L-B, and API 5L-X42 specifications. To avoid maintaining separate production runs and separate inventories, manufacturers typically triple or quadruple certify the pipes by meeting the metallurgical requirements and performing the required tests pursuant to the respective specifications. Since distributors sell the vast majority of this product, they can thereby maintain a single inventory to service all customers. The primary application of ASTM A106 pressure pipes in large diameters is for use as oil and gas distribution lines for commercial applications. A more minor application for large diameter seamless pipes is for use in pressure piping systems by refineries, petrochemical plants, and chemical plants, as well as in power generation plants and in some oil field uses (on shore and off shore) such as for separator lines, gathering lines and metering runs. These applications constitute the majority of the market for the subject seamless pipes. However, ASTM A106 pipes may be used in some boiler applications.

The scope of this order includes all seamless pipe meeting the physical

parameters described above and produced to one of the specifications listed above, regardless of application, with the exception of the exclusions discussed below, whether or not also certified to a non-covered specification. Standard, line, and pressure applications and the above-listed specifications are defining characteristics of the scope of this order. Therefore, seamless pipes meeting the physical description above, but not produced to the ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications shall be covered if used in a standard, line, or pressure application, with the exception of the specific exclusions discussed below.

For example, there are certain other ASTM specifications of pipe which, because of overlapping characteristics, could potentially be used in ASTM A106 applications. These specifications generally include ASTM A161, ASTM A192, ASTM A210, ASTM A252, ASTM A501, ASTM A523, ASTM A524, and ASTM A618. When such pipes are used in a standard, line, or pressure pipe application, such products are covered by the scope of this order.

Specifically excluded from the scope of this order are:

A. Boiler tubing and mechanical tubing, if such products are not produced to ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications and are not used in standard, line, or pressure pipe applications.

B. Finished and unfinished oil country tubular goods (OCTG), if covered by the scope of another antidumping duty order from the same country. If not covered by such an OCTG order, finished and unfinished OCTG are included in this scope when used in standard, line or pressure applications.

C. Products produced to the A335 specification unless they are used in an application that would normally utilize ASTM A53, ASTM A106, ASTM A333, ASTM A334, ASTM A589, ASTM A795, and API 5L specifications.

D. Line and riser pipe for deepwater application, i.e., line and riser pipe that is (1) used in a deepwater application, which means for use in water depths of 1,500 feet or more; (2) intended for use in and is actually used for a specific deepwater project; (3) rated for a specified minimum yield strength of not less than 60,000 psi; and (4) not identified or certified through the use of a monogram, stencil, or otherwise marked with an API specification (e.g., API 5L). With regard to the excluded products listed above, the Department

will not instruct U.S. Customs and Border Protection (CBP) to require end-use certification until such time as petitioner or other interested parties provide to the Department a reasonable basis to believe or suspect that the products are being utilized in a covered application. If such information is provided, the Department will require end-use certification only for the product(s) (or specification(s)) for which evidence is provided that such products are being used in a covered application as described above. For example, if, based on evidence provided by the petitioner, the Department finds a reasonable basis to believe or suspect that seamless pipe produced to the A-335 specification is being used in an A-106 application, it will require end-use certifications for imports of that specification. Normally the Department will require only the importer of record to certify to the end-use of the imported merchandise. If it later proves necessary for adequate implementation, the Department may also require producers who export such products to the United States to provide such certification on invoices accompanying shipments to the United States. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the *Issues and Decision Memorandum for the Expedited Sunset Reviews of the Antidumping Duty Orders on Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Japan and Mexico; Final Results* (Decision Memo) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were to be revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>, under the heading "September 2005." The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty orders on Large Diameter SSLPP from Japan and Mexico would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|---------------------------------------|-----------------------------------|
| Japan. | |
| Nippon Steel Corporation | 107.80 |
| Kawasaki Steel Corporation | 107.80 |
| Sumitomo Metal Industries, Ltd. (SMI) | 107.80 |
| All Others | 68.80 |
| Mexico. | |
| TAMSA | 15.05 |
| All Others | 15.05 |

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's Regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation, which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4847 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-588-835

Oil Country Tubular Goods from Japan: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Oil Country Tubular Goods (OCTG) from Japan in response to requests by the United States Steel Corporation, a petitioner in

the original investigation (petitioner). United States Steel Corporation requested administrative reviews of JFE Steel Corporation (JFE), Nippon Steel Corporation (Nippon), NKK Tubes (NKK) and Sumitomo Metal Industries, Ltd. (SMI). This review covers sales of subject merchandise to the United States during the period of August 1, 2003 through July 31, 2004.

We have preliminarily determined that NKK and SMI had no reviewable sales of subject merchandise during the period of review (POR) and that the review of these two companies should be rescinded. We have also preliminarily determined that adverse facts available should be applied to the remaining respondents, neither of which participated in this administrative review. Interested parties are invited to comment on these preliminary results. See the *Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT:

Mark Hoadley or Kimberley Hunt, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3148 or (202) 482-1272, respectively.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 11, 1995, the Department published the antidumping duty order on OCTG from Japan in the **Federal Register** (60 FR 41058). On August 3, 2004, the Department published a notice of opportunity to request an administrative review of this order (69 FR 46496). On August 31, 2004, the Department received a timely request for review from petitioner covering JFE, Nippon, NKK and SMI.¹ On September 22, 2004, we published a notice initiating an administrative review of the antidumping order on OCTG from Japan. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 56745.

The Department issued Sections A, B and C of its original questionnaire on November 12, 2004.² On November 18,

¹ The Department found SMI and Sumitomo Corporation (SC) to be affiliated in a previous review. See *Oil Country Tubular Goods From Japan: Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review*, 64 FR 48589, 48591 (September 7, 1999). Neither SMI nor SC has placed information on the record of this review suggesting that the basis for this finding has changed.

² Section A of the questionnaire requests general information concerning a company's corporate

Continued

2004, SMI responded that it did not export subject merchandise to the United States during the POR. On December 15 and 20, 2004, respectively, Nippon and JFE stated that they did not intend to participate in the administrative review and would not be submitting a response to the Department's questionnaire. On December 20, 2004, NKK submitted a no-shipment certification and asked for an expeditious rescission of the review.

On May 5, 2005, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until August 31, 2005. See *Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Oil Country Tubular Goods from Japan*, 70 FR 23844 (May 5, 2005).

PERIOD OF REVIEW

This review covers the period August 1, 2003, through July 31, 2004.

SCOPE OF THE ORDER

The merchandise covered by this order consists of oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50,

structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

ANALYSIS

Partial Rescission of Administrative Review for NKK and SMI

In response to our original questionnaire of November 12, 2004, both SMI and NKK submitted no-shipment certifications. The petitioner did not comment on the no-shipment claim.

In order to corroborate the no-shipment statement, the Department requested information from U.S. Customs and Border Protection (CBP). Such information showed entries of subject merchandise produced by both NKK and SMI during the POR. The Department issued letters to NKK and SMI asking for an explanation regarding these entries. NKK responded by stating that all shipments appearing in the CBP information were non-subject merchandise. SMI responded that it and its affiliate Sumitomo Corporation (SC) had again reviewed their records and that, other than temporary importation under bond (TIB) entries, neither SMI nor SC sold any subject OCTG to customers in the United States during the POR. NKK submitted documentation demonstrating that the only entries for consumption in question involved OCTG specifically excluded from the scope of the order. Additionally, NKK included a general explanation of the steps it had followed to ensure the accuracy of the no-shipment certification previously submitted. The Department also asked NKK for additional information regarding imports from NKK Corporation, which the Department had previously found to be affiliated with NKK. In response, NKK stated that it had searched its sales database again and confirmed that it had no exports of subject merchandise to the United States during the POR. NKK also confirmed that it had no knowledge of

or reason to know of any entries for consumption of subject merchandise manufactured by NKK Corporation during the POR.

In accordance with section 351.213(d)(3) of the Department's regulations, we are preliminarily rescinding the administrative review of NKK. We have based our preliminary decision regarding NKK on the letters and documentation from NKK supporting its certification that it had no shipments of the subject merchandise during the POR, on our examination of the CBP database for imports of entered merchandise produced by NKK and NKK Corporation, and on our review of entry documentation. There is no information on the record to indicate that NKK or NKK Corporation had knowledge that its merchandise was being sold to the United States during the POR. As a result, we find that NKK had no sales of subject merchandise during the POR covered by this administrative review.

SMI stated it did not sell any OCTG subject to the order for export to the United States during the POR. SMI further stated that it had reviewed its records and asked its affiliate, SC, to again review its records. SMI conclusively stated that it is not aware of any shipments of OCTG produced by SMI that may have been entered for consumption during the POR other than under TIB, which was subsequently exported from the United States.

In response to the Department's request for additional information, SMI stated that OCTG is sold to the U.S. market exclusively through trading companies. SMI stated that it reviewed its records of OCTG shipments before and during the POR and concluded that it did not sell subject merchandise to any of the companies listed as importers in the CBP information. SMI claims that it has no information about these shipments and no way to get information about these shipments. Finally, SMI stated that it did sell non-subject merchandise directly to customers in the United States. SMI also asked SC to review once again its records and again stated that SMI did not sell OCTG covered by the antidumping order to the United States during the POR.

In addition, SMI submitted a letter commenting on the information on the record of the review and stated that there is no evidence on the record that SMI knew, or had reason to believe, that any subject merchandise manufactured by SMI would be entered into the United States during the POR.

In accordance with section 351.213(d)(3) of the Department's

regulations, we are preliminarily rescinding the administrative review with respect to both SMI and SC. We have based our preliminary determination regarding SMI on the letters and documentation from SMI and SC supporting their certification that they had no shipments of the subject merchandise during the POR, and on our examination of information obtained from CBP. There is no information on the record to indicate that SMI or SC had knowledge that its subject merchandise was being resold to the United States during the POR. As a result, we find that neither SMI nor SC had sales during the POR that are subject to this administrative review. The Department may still verify the information submitted by SMI and SC before the final results of this review.

Application of Facts Available

Pursuant to sections 776(a)(1) and (2) of the Tariff Act of 1930, as amended (the Act), if necessary information is not available on the record, or if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination. In this case, JFE's and Nippon's stated decision not to participate in the review constitutes a refusal to provide the information necessary to conduct the Department's antidumping analysis, pursuant to section 776(a)(2)(A) of the Act. Moreover, respondents' non-participation significantly impedes the review process. See section 776(a)(2)(C) of the Act. Therefore, the Department must resort to facts otherwise available in reaching the applicable determination. Absent any response on the record from respondents, sections 782(d) and (e) do not apply.

Section 776(b) of the Act further provides that, in selecting from among the facts otherwise available, the Department may use an inference adverse to the interests of a party that has failed to cooperate by not acting to the best of its ability to comply with a request for information. See also the *Statement of Administrative Action* (SAA), accompanying the Uruguay Round Agreements Act (URAA), H. Doc.

No. 103-316 at 870, which specifically states that a failure to respond to the questionnaire may lead the Department to conclude that the company has not been responsive and to thus proceed on the basis of facts otherwise available. By refusing to respond to the Department's questionnaire, JFE and Nippon have failed to cooperate to the best of their ability. Neither JFE nor Nippon expressed concerns regarding the proposed deadlines, nor requested additional time. Without information from these two companies, the Department is unable to perform any company-specific analysis or calculate dumping margins for the POR. Therefore, pursuant to section 776(b) of the Act, the Department has determined that an adverse inference is warranted with respect to JFE and Nippon.

We note that, in selecting an adverse facts available (AFA) rate, the Department's practice has been to assign respondents who fail to cooperate with the Department the highest margin determined for any party in the less-than-fair-value (LTFV) investigation or in any administrative review. See *Sigma Corp. v. United States*, 117 F.3d 1401, 1411 (Fed. Cir. 1997). As AFA, the Department is assigning the rate of 44.20 percent. This has been the only affirmative margin calculated in this proceeding since the investigation's preliminary determination. See *Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Oil Country Tubular Goods from Japan*, 60 FR 6506 (February 2, 1995). It is also the rate applied in the final determination of the investigation of sales at LTFV. In the LTFV investigation, respondents Nippon and SMI did not respond to the Department's questionnaire and did not otherwise cooperate to the best of their ability, therefore the Department applied best information available (BIA) (now referred to as FA). See LTFV investigation. This rate has been used as the AFA rate in the investigation and in subsequent reviews. We preliminarily determine that it is thus appropriate to apply the AFA rate of 44.20 to Nippon and JFE for purposes of these preliminary results.

Corroboration

Section 776(c) of the Act provides that, when the Department applies facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA clarifies that the petition is "secondary information," and states that

"corroborate" means to determine that the information used has probative value. See SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the reliability of the 44.20 percent rate and found it to be reliable. This rate was originally taken from the petition; it was based upon the difference between the U.S. price of a representative OCTG product sold by a Japanese company and the constructed value for that product.

The Department considers information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's aberrational business expense that resulted in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. See *D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here.

Our review of the information in the original petition pertaining to the price of the product and the major inputs and processes used for the production of the final merchandise did not indicate that the analysis of the OCTG market in the petition is no longer appropriate to use as a basis for facts available. Furthermore, nothing on the record of this review supports the determination that the highest margin rate from the petition in the underlying investigation does not represent reliable and relevant information for AFA purposes. Therefore, in this proceeding, the highest margin from the petition is the most appropriate information on which to base a margin for these uncooperative respondents. See *Oil Country Tubular Goods from Japan; Preliminary Results of Antidumping Duty Administrative Review and Final Partial Rescission of Antidumping Duty Administrative Review*, 65 FR 54838 (September 11, 2000).

Accordingly, we determine that the highest rate from any previous segment of this administrative proceeding (*i.e.*,

the rate of 44.20 percent from the original investigation) is in accord with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it be shown to have probative value).

PRELIMINARY RESULTS OF REVIEW

We preliminarily determine that the following dumping margins exist:

| Manufacturer/Exporter | Margin (percent) |
|--------------------------------|------------------|
| JFE Steel Corporation | 44.20 |
| Nippon Steel Corporation | 44.20 |

PUBLIC COMMENT

Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless the deadline is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Department specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

DUTY ASSESSMENT

Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative

review, if any importer- or customer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, if the Department's final results include the rescission of this review with respect to SMI and NKK, the Department will instruct CBP to liquidate all entries from SMI and NKK at the rate applicable at the time of entry.

CASH DEPOSIT REQUIREMENTS

The following cash deposit rates will be effective with respect to all shipments of OCTG from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for JFE and Nippon, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, including NKK and SMI (if this review is rescinded), the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the all others rate established in the LTFV investigation, which is 44.20 percent. *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Oil Country Tubular Goods from Japan*, 60 FR 155 (August 11, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

NOTIFICATION TO IMPORTERS

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4864 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(A-533-806, A-570-815)

Sulfanilic Acid from India and the People's Republic of China; Notice of Final Results of Expedited Sunset Reviews of Antidumping Duty Orders

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

SUMMARY: On May 2, 2005, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on sulfanilic acid from India and the People's Republic of China ("China") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a Notice of Intent to Participate, adequate substantive responses filed on behalf of domestic interested parties, and lack of response from respondent interested parties, the Department conducted expedited (120-day) sunset reviews. As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Reviews* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT:

Hilary E. Sadler, Esq. or Maureen Flannery, Office 8, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Background:

On May 2, 2005, the Department published the notice of initiation of the sunset reviews of the antidumping duty orders on sulfanilic acid from India and

China.¹ On May 12, 2005, the Department received a Notice of Intent to Participate from Nation Ford Chemical Company (“NFC”), the domestic interested party, within the deadline specified in section 315.218(d)(1)(i) of the Department’s regulations. NFC claimed interested party status under section 771(9)(C) of the Act, as a producer of the domestic-like product in the United States. On May 31, 2005, the Department received a complete substantive response from NFC within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct expedited reviews of these orders.

Scope of the Orders:

Imports covered by this antidumping duty order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum

alkali insoluble materials based on the equivalent sulfanilic acid content.

The Department conducted a scope ruling regarding 3V Corporation and determined that sodium sulfanilate processed in Italy from sulfanilic acid from India was within the scope of this order. See *Notice of Scope Rulings and Anticircumvention Inquiries*, 65 FR 41957 (July 7, 2000).

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received:

All issues raised in these reviews are addressed in the “Issues and Decision Memorandum” (“Decision Memorandum”) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the orders were revoked. Parties can find a complete discussion of all issues raised in these reviews and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>, under the heading “September 2005.” The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews:

We determine that revocation of the antidumping duty orders on sulfanilic acid from India and China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|---|-----------------------------------|
| <i>India.</i> All Indian Manufacturers and Exporters | 114.80 ² |
| <i>China.</i> China National Chemicals I&E Corporation, Hebei Branch | 19.14 |

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|-----------------------------------|-----------------------------------|
| China-wide rate | 85.20 |

² The Department published its final affirmative determination of sales at less than fair value (“LTFV”) with respect to imports of sulfanilic acid from India on January 8, 1993 (58 FR 3251). In this determination, the Department published a weighted-average dumping margin for all manufacturers/producers/exporters of 114.8 percent.

This notice also serves as the only reminder to parties subject to administrative protective orders (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department’s regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4866 Filed 9-6-05; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-856

Synthetic Indigo from the People’s Republic of China; Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

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

SUMMARY: On May 2, 2005, the Department of Commerce (“the Department”) initiated the sunset review of the antidumping duty order on synthetic indigo from the People’s Republic of China (“China”) pursuant to section 751(c) of the Tariff Act of 1930,

However, consistent with section 772(d)(1)(D) of the Act, which prohibits assessing antidumping duties on the portion of the margin attributable to an export subsidy, we established an estimated antidumping duty deposit rate of 71.09 percent for duty deposit purposes. The Department issued its antidumping duty order on sulfanilic acid from India on March 2, 1993. See *Notice of Antidumping Duty Order; Sulfanilic Acid from India*, 58 FR 12025 (March 2, 1993). The Department has not conducted an administrative review of this order since its imposition.

¹ See *Initiation of Five-Year (“Sunset”) Reviews*, 70 FR 22632 (May 2, 2005) (“Initiation Notice”).

as amended (“the Act”). On the basis of a Notice of Intent to Participate, adequate substantive response filed on behalf of a domestic interested party, and lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION Hilary E. Sadler, Esq., AD/CVD Operations, Office 8, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4340.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department published the notice of initiation of the sunset review of the antidumping duty order on synthetic indigo from China. See *Initiation of Five-year (“Sunset”) Reviews*, 70 FR 22632 (May 2, 2005) (“Initiation Notice”). On May 17, 2005, the Department received a Notice of Intent to Participate from Buffalo Color Corporation (“Buffalo Color”), a domestic interested party, within the deadline specified in section 315.218(d)(1)(i) of the Department’s regulations. Buffalo Color claimed interested party status under section 771(9)(C) of the Act, as a manufacturer, producer, or wholesaler in the United States of a domestic like product. On June 1, 2005, the Department received a complete substantive response from Buffalo Color within the deadline specified in section 351.218(d)(3)(i) of the Department’s regulations. We did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department’s regulations, the Department determined to conduct an expedited review of this order.

Scope of the Order

The products subject to this order are the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as “Vat Blue 1.” Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives, pre-reduced indigo or indigo white (Color Index No.

73001) and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength. Synthetic indigo and its derivatives subject to this order are currently classifiable under subheadings 3204.15.10.00, 3204.15.40.00 or 3204.15.80.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the “Issues and Decision Memorandum” (“Decision Memo”) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B-099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/frn/index.html>, under the heading “September 2005.” The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on synthetic indigo from China would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|---|-----------------------------------|
| Wonderful Chemical Industrial Ltd./Jiangsu Taifeng Chemical Industry Company, Ltd. | 129.60 |
| China National Chemical Construction Jiangsu Company | 79.70 |
| China Jiangsu International Economic Technical Cooperation Corp | 129.60 |
| Shanghai Yongchen International Trading Company Ltd. | 79.70 |
| Hebei Jinzhou Import & Export Corporation | 79.70 |

| Manufacturers/Exporters/Producers | Weighted Average Margin (percent) |
|---|-----------------------------------|
| Sinochem Hebei Import & Export Corporation | 79.70 |
| Chongqing Dyestuff Import & Export United Corporation | 79.70 |
| Wuhan Tianjin Chemicals Imports & Exports Corp., Ltd. | 79.70 |
| China-wide Rate | 129.60 |

This notice also serves as the only reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department’s regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4865 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(C-533-821)

Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from India

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

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Preeti Tolani or Tipten Troidl, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0395 and (202) 482-1767, respectively.

SUPPLEMENTARY INFORMATION:

Background Information

On January 31, 2005, the U.S. Department of Commerce (“the Department”) published a notice of

initiation of the administrative review on the countervailing duty order of certain hot-rolled carbon steel flat products from India, covering the period January 1, 2004, through December 31, 2004. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). The preliminary results of this review are currently due no later than September 2, 2005.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reason. On July 19, 2005, the Department issued a New Subsidy Allegation memorandum, where we initiated on one new program and agreed to examine two additional programs that the Department has investigated in other India CVD proceedings. See July 19, 2005, New Subsidy Allegation memorandum from the team to Melissa G. Skinner, Office Director ("New Subsidy Allegation Memorandum"). Conducting the analyses for each program would require the Department to gather and analyze a significant amount of information pertaining to these programs. The Department gave respondent parties 37 days to provide the requested information on these programs. The current due date is August 25, 2005, with no extensions. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than December 31, 2005. However, December 31 falls on Saturday and January 2 is a federal holiday, and it is the Department's long-standing practice to issue a determination the next business day when the statutory deadline falls on a weekend, federal holiday, or any other day when the Department is closed. See *Notice of Clarification: Application of "Next Business Day" Rule for*

Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005). Accordingly, the deadline for completion of the preliminary results is January 3, 2006. The final results continue to be due 120 days after publication of the preliminary results.

Dated: August 31, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5-4863 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(C-580-842)

Final Results of Expedited Sunset Review of the Countervailing Duty Order: Structural Steel Beams from South Korea

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

SUMMARY: On May 2, 2005, the Department of Commerce ("the Department") initiated a sunset review of the countervailing ("CVD") duty order on structural steel beams from South Korea pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-year ("Sunset") Reviews*, 70 FR 22632 (May 2, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of the domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this sunset review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Goldberger, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482-1767 or (202) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department initiated a sunset review of the CVD order on structural steel beams from South Korea pursuant to section 751(c) of the Act. See *Initiation of Five-year ("Sunset") Reviews*, 70 FR 22632 (May 2, 2005). The Department received a notice of intent to participate from the following domestic interested parties: the Committee for Fair Beam Imports and its individual members including Nucor Corp. ("Nucor"), Nucor-Yamato Steel Co. ("Nucor-Yamato"), Steel Dynamics, Inc. ("SDI"), and TXI-Chaparral Steel, Inc. ("TXI") (collectively, "domestic interested parties"), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (E) of the Act, as an ad-hoc association which is comprised of domestic producers of the subject merchandise.

The Department received a complete substantive response collectively from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this CVD order.

Scope of the Order

The merchandise covered by this CVD order are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated, or clad. These products ("Structural Steel Beams") include, but are not limited to, wide-flange beams (W shapes), bearing piles (HP shapes), standard beams (S or I shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this order unless otherwise excluded. The following products are outside and/or specifically excluded from the scope of this order: Structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at

subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060, 7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise in this order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (“Decision Memorandum”) from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B-099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

| Producers/Exporters | Net Countervailable Subsidy (percent) |
|-----------------------------------|---------------------------------------|
| Kangwon Industries | 3.88 |
| Dongkuk Steel Mill Co., Ltd. | 1.34 |
| All Others | 3.87 |

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (“APO”) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4869 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

(C-533-807)

Final Results of Expedited Sunset Review of Countervailing Duty Order: Sulfanilic Acid from India

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

SUMMARY: On May 2, 2005, the Department of Commerce (“the Department”) initiated a sunset review of the countervailing duty (“CVD”) order on sulfanilic acid from India pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See *Initiation of Five-Year (“Sunset”) Reviews*, 70 FR 22632 (May 2, 2005). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of a domestic interested party and an inadequate response (in this case, no response) from respondent interested parties, the Department decided to conduct an expedited sunset review of this CVD order pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B). As a result of this review, the Department finds that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the level indicated the “Final Results of Review” section of this notice.

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl or David Goldberger, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington; DC 20230; telephone: (202) 482-1767 or (101) 482-4136, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2005, the Department initiated a sunset review of the CVD order on sulfanilic acid from India pursuant to section 751(c) of the Act. See *Initiation of Five-Year (“Sunset”) Reviews*, 70 FR 22632 (May 2, 2005). The Department received a notice of intent to participate on behalf of National Ford Chemical Company

(“NFC”), within the deadline specified in 19 CFR 351.218(d)(1)(i). NFC claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of sulfanilic acid.

The Department received a complete substantive response from NFC within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). However, the Department did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited review of this order.

Scope of the Order

The merchandise covered by the CVD order are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate). The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders. Technical sulfanilic acid contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials. Sodium salt of sulfanilic acid (sodium sulfanilate) is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. The merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (“HTSUS”) subheadings 2921.42.22 and 2921.42.24.20. HTSUS subheadings for sulfanilic acid and sodium salts of sulfanilic acid have changed since the issuance of this order. The petitioner asserts that the HTSUS subheading for sulfanilic acid was 2921.42.24.20 in 1993 and has remained at 2921.42.22 since 1994. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum (“Decision Memorandum”) from Barbara E. Tillman, Acting Deputy Assistant

Secretary for Import Administration, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, dated August 30, 2005, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendation in this public memorandum which is on file in the Central Records Unit room B-099 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rate listed below:

| Producers/Exporters | Net Countervailable Subsidy (percent) |
|---|---------------------------------------|
| All Manufacturers/Producers/Exporters | 43.71 |

Notification Regarding Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5-4857 Filed 9-6-05; 8:45 am]

Billing Code: 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Docket Number: 050830232-5232-01

Implementation of Grants to Manufacturers of Certain Worsted Wool Fabrics Established Under Title IV of the Miscellaneous Trade and Technical Corrections Act of 2004

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice Announcing the Availability of Grant Funds.

SUMMARY: This Notice announces the availability of grant funds in calendar year 2005 for manufacturers of certain worsted wool fabrics. The purpose of this notice is to provide the general public with a single source of program and application information related to the worsted wool grant offerings, and it contains the information about the program required to be published in the **Federal Register**.

DATES: Applications by eligible U.S. producers of certain worsted wool fabrics must be received or postmarked by 5:00 p.m. Eastern Daylight Standard Time on October 7, 2005. Applications received after the closing date and time will not be considered.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, Washington, DC 20230, (202) 482-4058.

FOR FURTHER INFORMATION CONTACT: Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Electronic Access: The full funding opportunity announcement for the worsted wool fabrics program is available through FedGrants at <http://www.grants.gov>. The Catalog of Federal Domestic Assistance (CFDA) Number is 11.113, Special Projects.

Statutory Authority: Section 4002(c)(6) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Public Law 108-429, 118 Stat. 2603) (the "Act").

Program Description: Section 4002(c)(6)(A) of the Act authorizes the Secretary of Commerce to provide grants to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000, and 2001, manufacturers of two categories of worsted wool fabrics. The first category are manufacturers of worsted wool fabrics, containing 85

percent or more by weight of wool, with average fiber diameters greater than 18.5 micron (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); the total amount of available funds is \$2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.11. The second category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters of 18.5 micron or less (HTS heading 9902.51.12); the total amount of available funds is \$2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.12.

Funding Availability: The Secretary of Commerce is authorized under section 4002(c)(6)(A) of the Act to provide grants to manufacturers of certain worsted wool fabrics. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund (the "Trust Fund"). The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be \$2,666,000 in each of calendar years 2005, 2006 and 2007. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.12 shall also be \$2,666,000 in each of calendar years 2005, 2006 and 2007.

Eligibility Criteria: Eligible applicants for the worsted wool fabric program include persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000 and 2001, manufacturers of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.12. Any manufacturer who becomes a successor-of-interest to a manufacturer of the worsted wool fabrics described in HTS 9902.51.11 or HTS 9902.51.12 during 1999, 2000 or 2001 because of a reorganization or otherwise, shall be eligible to apply for such grants.

Applications to Receive Allocations: An applicant must have produced worsted wool fabric of a kind described in HTS 9902.51.11 or 9902.51.12 in the United States in each of calendar years 1999, 2000 and 2001. Applicants must provide: (1) company name, address, contact and phone number; (2) Federal tax identification number; (3) the name and address of each plant or location in the United States where worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.12 was woven by the applicant; (4) the quantity

of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.12, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001; and (5) the value of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.12, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001. This data must indicate actual production (not estimates) of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.12.

At the conclusion of the application, the applicant must attest that "all information contained in the application is complete and correct and no false claims, statements, or representations have been made." Applicants should be aware that, generally, pursuant to 31 U.S.C. 3729, persons providing a false or fraudulent claim, and, pursuant to 18 U.S.C. 1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively.

Information that is marked "business confidential" will be protected from disclosure to the full extent permitted by law.

Other Application Requirements: Complete applications must include the following forms and documents: CD-346, Applicant for Funding Assistance; CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; SF-424, Application for Federal Assistance; and SF-424B, Assurances - Non-Construction Programs. The CD forms are available via web site: <http://www.osec.doc.gov/forms/direct.htm> The SF forms are available via web site: http://www.whitehouse.gov/omb/grants/grants_forms.html.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 269, 424, 424A, 424B, SF-LLL, and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0039, 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Allocation Procedures: Section 4002(c)(6)(A) of the Act requires that each grant be allocated among eligible applicants on the basis of the percentage

of each manufacturers' production of the fabric described in HTS 9902.51.11 or HTS 9902.51.12 for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify for such grants. Following the closing date of the receipt of applications, the Department shall calculate the appropriate allocation of the allotted funds among eligible applicants in accordance with the statutory procedures. Award decisions shall be final and not subject to appeal or protest.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

Administrative and National Policy Requirements: Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

It has been determined that this notice is not significant for purposes of E.O. 12866.

Administrative Procedure/Regulatory Flexibility: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 USC 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Dated: September 2, 2005.

James C. Leonard III,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc.05-17826 Filed 9-2-05; 2:43 pm]

BILLING CODE 3510-DS

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for a Permit Application for Navigation Modifications and Improvements as Part of the San Pedro Waterfront and Promenade Development, in the Port of Los Angeles, Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent (NOI).

SUMMARY: The U.S. Army Corps of Engineers (Corps) Los Angeles District in conjunction with the Los Angeles Harbor Department (Port) is examining the feasibility of various waterside navigation improvements as part of the Port's proposed San Pedro Waterfront and Promenade redevelopment proposal in the Port of Los Angeles. The Corps is considering the Port's application for a Department of the Army permit under Clean Water Act Section 404 and River and Harbor Act Section 10 to conduct dredge and fill activities and construct various navigation improvements.

The primary Federal involvement is the discharge of dredge and/or fill materials within waters of the United States, work (e.g. dredging) and structures in or affecting navigable waters of the United States, and potential impacts on the human environment from such activities. Therefore, in accordance with the National Environmental Policy Act (NEPA), the Corps is requiring the preparation of an Environmental Impact Statement (EIS) prior to rendering a final decision on the Port's permit application. The Corps may ultimately make a determination to permit or deny the above project or permit or deny modified versions of the above project.

Pursuant to the California Environmental Quality Act (CEQA), the Port will serve as Lead Agency for the Preparation of an Environmental Impact Report (EIR). The Corps and the Port have agreed to jointly prepare a Draft EIS/EIR for the improvements at Berth 136-147 in order to optimize efficiency and avoid duplication. The Draft EIS/EIR is intended to be sufficient in scope to address both the Federal and the state and local requirements and environmental issues concerning the proposed activities and permit approvals.

FOR FURTHER INFORMATION CONTACT:

Questions about the proposed action and Draft EIS/EIR can be answered by Mr. Joshua Burnam, Corps Project Manager, at (213) 452-3294. Comments shall be addressed to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch. ATTN: File Number 2003-0-1142-JLB P.O. Box 532711, Los Angeles, CA 90053-2325, and Dr. Ralph Appy, Director of Environmental Management, Port of Los Angeles, 425 S. Palos Verdes St., San Pedro, CA 90731.

SUPPLEMENTARY INFORMATION:

1. *Background.* The EIS/EIR will assess a master development plan for specific development projects and

associated infrastructure improvements for approximately 418 acres, from the Vincent Thomas Bridge to the federal breakwater within the property of the City of Los Angeles, Harbor Department. The proposed project would be developed over multiple phases throughout the next approximately 30 years. The EIS/EIR will analyze the master development plan at a programmatic (general overview) level to focus on the cumulative impacts associated with the entire proposed plan. Where information is available, project elements proposed during Phase 1 (Years 1—5) and Phase 2 (Years 6—10) will be studied at a project-specific level of detail. Project elements proposed for construction in Phase 3 (Years 11+) of the master development plan and other project elements for which data are not available will require an additional CEQA and NEPA evaluation, where appropriate, before construction could occur.

2. *Clean Water Act Project Purpose.* The overall project purpose relevant to the Clean Water Act Section 404 is to:

(a) Perform modifications to the existing shoreline, including water cutouts to increase water area (up to 9.64 acres maximum) and fills, as needed, to reconfigure the site to provide for a variety of waterfront uses, including berthing for visiting tall ships and other vessels, additional marinas for pleasure craft, water taxi and ferry service, tugboats, and other recreational, commercial, and port-related uses, without impeding the public's right to free navigation;

(b) preserve or enhance natural systems that are already within the Port complex (*i.e.*, beaches, salt marsh, wetlands, shallow and deep water habitat, and bluffs);

(c) utilize and enhance the value of existing deep water in the Outer Harbor and Main Channel by upgrading two existing cruise vessel berths and constructing up to two new cruise vessel berths, each approximately 1,250 linear feet, to accommodate projected future growth in the cruise ship industry (one of the new cruise vessel berths would operate 120 days per year);

(d) create a permanent berth for Catalina Express and Island Express; and

(e) provide for a variety of waterfront uses, including berthing for visiting tall ships and other vessels, additional marinas for pleasure crafts, water taxi and ferry service, tugboats, and other recreational, commercial, and port-related uses.

3. *Issues.* There are several potential environmental issues that will be addressed in the EIS/EIR. Additional

issues may be identified during the scoping process. Issues initially identified as potentially significant include:

(a) Geological issues, including dredging and stabilization of fill areas in an area of known seismic activity;

(b) Impacts to hydrology;

(c) Impacts to air quality;

(d) Impacts to traffic, including marine navigation and ground transportation;

(e) Potential for noise impacts;

(f) Impacts to public utilities and services;

(g) Potential impacts to aesthetic resources, including light and glare;

(h) Potential impacts on public health and safety;

(i) Cumulative impacts; and

(j) Disposal of dredged materials.

4. *Alternatives.* Alternatives initially being considered for the proposed improvement project include the following:

(a) *No Project/No Action.* This alternative would not implement any of the elements presented in the project description.

(b) *No Federal Action Baseline.* This alternative is the proposed project without any activity requiring a Corps permit. This alternative represents Corps' environmental baseline.

(c) *No Federal Action Baseline with Cruise Ship Expansion.* This alternative represents an additional Corps environmental baseline wherein LAHD would only receive Corps permits for the Cruise Ship Expansion/Modification features of the proposed project. This evaluation would allow Corps and LAHD to separately weigh the impact of the cruise ship facilities.

(d) *Reduced Density Alternative.* This alternative would reduce the density or amount of development as presented in the project description. Results from LAHD-sponsored June 4, 2005 Reduced Development Alternative workshop, held in conjunction with the Port Community Advisory Committee and the San Pedro Neighborhood Councils, along with comments received by the public, would define the project elements included in this alternative.

(e) *Maximum Density Alternative.* This alternative would increase the density, amount of development, or timing of development as presented in the project description. Comments received by the public and LAHD's Engineering and Project Design Team would influence the project elements included in this alternative.

5. *Scoping Process.* The U.S. Army Corps of Engineers and the Los Angeles Harbor Department (LAHD) will jointly conduct a public scoping meeting for

the proposed From Bridge to Breakwater Master Development Plan for the San Pedro Waterfront and Promenade Project—Draft Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) to receive public comment and assess public concerns regarding the appropriate scope and preparation of the Draft EIS/EIR. Participation in the public meeting by Federal, state, and local agencies and other interested organizations and persons are encouraged. This meeting will be conducted in both English and Spanish. Members of the public who wish to communicate and listen entirely in Spanish are encouraged to attend this meeting. The meeting will be held on October 11, 2005 from 6 p.m.—8:30 p.m. at the Los Angeles Harbor Hotel, located at 601 South Palms Verdes Street. Parties interested in being added to the Corps' electronic mail notification list for the Port of Los Angeles can register at: <http://www.spl.usace.army.mil/regulatory/register.html>. This list will be used in the future to notify the public about scheduled hearings and availability of future public notices. Participation in the public meeting by Federal, state and local agencies and other interested organizations and persons are encouraged.

During the public scoping hearing, anyone wishing to make a statement will be allocated a certain amount of time to provide information on the proposed project. The amount of time each person is allowed will be directly dependent on the number of people who sign up to speak at the public hearing. At this time, we estimate that individuals will be given 3 minutes to provide their comments verbally. We would like to encourage interest groups to designate an official spokesperson to present the group's views. We will allocate a larger amount of time to official representatives of such groups upon request. Groups wishing to designate an official representative must notify the Corps in writing prior to, but no later than October 4, 2005. The determination of this extended speaking time will be based on the number of responses received by the Corps. This rule will be strictly enforced at the discretion of the Corps' hearing officer. Written and email comments to the Corps and LAHD will be received until October 28, 2005. Written comments should be sent to the address below: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Branch, c/o Dr. Joshua Burnam, 915 Wilshire, Los Angeles, California 90017-3401, e-mail: Joshua.L.Burnam@usace.army.mil.

6. *Availability of the Draft EIS/EIR.* The joint lead agencies expect the Draft

EIS/EIR to be made available to the public in June 2006. A public hearing will be held during the public comment period for the Draft EIS/EIR.

Dated: August 22, 2005.

Mark R. Blackburn,

Lieutenant Colonel, U.S. Army, Acting District Engineer.

[FR Doc. 05-17691 Filed 9-6-05; 8:45 am]

BILLING CODE 3710-92-P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 2005 through June 30, 2005.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act, as amended (IDEA). Under section 607(d) of the IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education (Department) of the IDEA or the regulations that implement the IDEA.

FOR FURTHER INFORMATION CONTACT:

Melisande Lee or JoLeta Reynolds. Telephone: (202) 245-7468.

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 this notice in an alternative format (e.g., Braille, large print, audiotope, or computer diskette) on request to the contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from April 1, 2005 through June 30, 2005.

Included on the list are those letters that contain interpretations of the requirements of the IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date of and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals

involved, personally identifiable information has been deleted, as appropriate. Most of the changes made to the IDEA by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), which reauthorized and amended the IDEA, took effect on July 1, 2005. Because the letters in this list were issued prior to July 1, 2005, the effective date of IDEA 2004, statutory citations in this list refer to the provisions of the IDEA that were in effect prior to July 1, 2005.

Part B—Assistance for Education of All Children With Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Allocation of Funds.

- Letter dated June 20, 2005 to New York State Education Department Deputy Commissioner Dr. Rebecca Cort, clarifying that the New York State Education Department may not require its local educational agencies (LEAs) to pass through Part B funds to private providers or counties in the form of a suballocation required under New York law, but that at an LEA's discretion, disbursements may be made to cover the cost of providing special education and related services to individual students with disabilities.

Topic Addressed: Use of Funds.

- Letter dated May 5, 2005 to Guam Associate Superintendent of Education Vincent T. Leon Guerrero, clarifying that Part B funds may be used to purchase mini buses equipped with wheelchair lifts operated solely to provide transportation services for eligible students with disabilities.

- Letter dated April 5, 2005 to Louisiana Department of Education Superintendent of Education Cecil J. Picard, approving the State's request to use Part B funds to purchase computer equipment and software to improve educational services for students with disabilities in the State's residential programs.

Section 612—State Eligibility

Topic Addressed: Children with disabilities placed in private schools by their parents.

- Office of Special Education Programs Memorandum 05-09 dated June 27, 2005 to Chief State School Officers, regarding significant statutory changes made by IDEA 2004 governing the obligations of LEAs to parentally-placed private school children with disabilities attending private schools in the LEA's area of jurisdiction and

announcing that for the 2005-06 school year only, the Secretary will allow States and LEAs to use the best available data in calculating the proportionate amount of Federal funds to be expended on services for parentally-placed private school children with disabilities, in lieu of conducting new child counts.

Topic Addressed: Participation of children with disabilities in state and district-wide assessments.

- Letter dated June 22, 2005 to New Mexico Public Education Department Director of Special Education Denise Koscielniak, clarifying that IDEA requirements governing the participation of children with disabilities in State and districtwide assessments are applicable to New Mexico's kindergarten screening program.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Charter schools.

- Letter dated June 3, 2005 to Arizona Attorney Mary Ellen Simonson, regarding the Department's audit determination that for-profit charter schools are not eligible to receive funds under IDEA or Title I Part A of the Elementary and Secondary Education Act.

Part C—Infants and Toddlers With Disabilities

Section 636—Individualized Family Service Plan

Topic Addressed: Natural environments.

- Letter dated June 7, 2005 to Washington Infant and Toddler Early Intervention Program Director Sandy L. Morris, regarding the natural environments requirements in Part C of IDEA, and clarifying that IDEA 2004 continues the Department's longstanding interpretation that early intervention services must be provided in a natural environment, unless a written justification exists for providing these services in other settings.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister/index.html>.

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>.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: August 31, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 05-17665 Filed 9-6-05; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP05-574-000 and CP05-5-000]

Questar Pipeline Company; Notice of Tariff Filing

August 30, 2005.

Take notice that on August 25, 2005, Questar Pipeline Company (Questar), pursuant to 154.7 of the Commission's Regulations, and ordering paragraph D of the Commission's January 21, 2005, Order Issuing Certificate in Docket No. CP05-5-000, tendered for filing and acceptance the following tariff sheets to its First Revised Volume No. 1 to be effective October 1, 2005.

First Revised Volume No. 1

Thirty-Seventh Revised Sheet No. 5,
Eighteenth Revised Sheet No. 5A,
Third Revised Sheet No. 181,
Fourth Revised Sheet No. 184.

Questar states that copies of this filing were served upon the Public Service Commission of Utah and the Public Service Commission of Wyoming and customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone

filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5-4858 Filed 9-6-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05-157-005]

Saltville Gas Storage Company L.L.C.; Notice of Filing

August 30, 2005.

Take notice that on August 17, 2005, Saltville Gas Storage Company L.L.C. ("Saltville") tendered for filing an original and five copies of a Firm Storage Service Agreement ("FSS Agreement") with Sequent Energy Management, L.P. The subject agreement is in all respects the same as the FSS Agreement between Saltville and NUI Energy Brokers, Inc. ("NUIEB") previously filed with and approved by the Commission, but the agreement is corrected to reflect that the shipper is NUIEB's successor, Sequent Energy Management, L.P. Saltville requests an effective date of January 1, 2005 for the FSS Agreement, and requests that the Commission grant any authorizations and waivers of the Commission's regulations that are necessary to permit that effective date.

Saltville states that copies of the filing were mailed to all customers of Saltville and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email 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 September 6, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5-4860 Filed 9-6-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission**

[FERC Docket No. PF05-14-000, CSLC File No. PRC 8378.2, BLM Reference No. CACA-42662]

California State Lands Commission and North Baja Pipeline, LLC; Notice of Intent/Preparation To Prepare a Joint Environmental Impact Statement/Report and Proposed Land Use Plan Amendment for the Proposed North Baja Pipeline Expansion Project, Request for Comments on Environmental Issues/Impacts, and Notice of Public Scoping Meetings

August 30, 2005.

The staffs of the Federal Energy Regulatory Commission (FERC or Commission) and the California State Lands Commission (CSLC) will jointly prepare an environmental impact statement/report (EIS/EIR) that will discuss the environmental impacts of North Baja Pipeline, LLC's (North Baja) proposed North Baja Pipeline Expansion Project (Project) in La Paz County, Arizona and Riverside and Imperial Counties, California. This notice explains the scoping process that will be used to gather input from the public and interested agencies on the Project. Your input will help us determine which issues/impacts need to be evaluated in the EIS/EIR. Please note that the scoping period for the Project will close on October 10, 2005.

Comments may be submitted in written form or verbally. In lieu of or in addition to sending written comments, you are invited to attend the public scoping meetings that have been scheduled in the Project area. These meetings are scheduled for September 28, 2005 in Blythe, California and September 29, 2005 in El Centro, California. Further instructions on how to submit written comments and additional details of the public scoping meetings are provided in the public participation section of this notice.

The FERC will be the lead Federal agency and the CSLC will be the state lead agency for the preparation of the EIS/EIR. The joint document, which will avoid much duplication of environmental analyses, will satisfy the requirements of both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The FERC will use the EIS/EIR to consider the environmental impacts that could result if it issues North Baja a Certificate of Public Convenience and Necessity and a Presidential Permit under sections 7 and

3, respectively, of the Natural Gas Act. The CSLC will use the document to consider North Baja's application for leasing the State's Sovereign and School Lands for the pipeline and the environmental impacts that could result from any part of the Project in California.

The Bureau of Land Management (BLM) is participating as a cooperating agency in the preparation of the EIS/EIR because the Project would cross Federal land under the jurisdiction of the Palm Springs, El Centro, and Yuma Field Offices. The EIS/EIR will be used by the BLM to meet its NEPA responsibilities in considering North Baja's application to amend its existing Right-of-Way Grant and obtain a Temporary Use Permit for the portion of the Project on Federal land. The BLM will also use the EIS/EIR to consider amending the California Desert Conservation Area (CDCA) Plan (as amended), which would be necessary for any pipeline construction outside of designated utility corridors, as well as amending the Yuma District Resource Management Plan (Yuma District Plan), which would be necessary for pipeline construction across the Milpitas Wash Special Management Area (SMA).

With this notice, the environmental staffs of the FERC, the CSLC, and the BLM (Agency Staffs) are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues/impacts to participate as cooperating agencies in the preparation of the EIS/EIR. These agencies may choose to participate once they have evaluated North Baja's proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should file a request in accordance with the instructions for filing comments described later in this notice.

This notice is being sent to affected landowners; Federal, state, and local government agencies and elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. The Agency Staffs encourage elected government representatives to notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a North Baja representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. North Baja would seek to negotiate a mutually acceptable agreement. However, if the Project is approved by

the FERC, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, North Baja could initiate condemnation proceedings in accordance with California state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" is available for viewing on the FERC Internet Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the FERC's proceedings.

Summary of the Proposed Project

North Baja, an indirect wholly owned subsidiary of TransCanada Corporation, has announced its intention to expand its existing natural gas pipeline system in La Paz County, Arizona and Riverside and Imperial Counties, California. The existing North Baja system is currently certificated by the FERC to transport 512,500 dekatherms per day of natural gas in a southbound direction. The expansion Project would allow for a northbound flow of gas. Once completed, the expanded system would be capable of transporting up to 2 billion dekatherms per day of natural gas from proposed liquefied natural gas (LNG) terminals in Baja California, Mexico, from an interconnect with the Gasoducto Bajanorte Pipeline at the U.S.-Mexico border, to an interconnect with the existing SoCal Gas Company (SoCal Gas) system in Blythe, California, for delivery into California and other southwestern U.S. markets.

The facilities proposed by North Baja include the following to expand the existing system:

- Up to 80 miles of buried 36-inch- or 42-inch-diameter pipeline loop¹ (referred to as the "B-Line") adjacent to its existing 30-inch- and 36-inch-diameter pipeline (referred to as the "A-Line") in La Paz, Riverside, and Imperial Counties;
- One metering station at the interconnect with SoCal Gas in Blythe (Blythe Meter Station);
- One pig² receiver at the existing Ehrenberg Compressor Station in La Paz County;
- One pig launcher and one pig receiver at the existing Ogilby Meter Station in Imperial County;

¹ A loop is a segment of pipeline that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

² A pig is an internal tool used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

- Seven mainline valves along the right-of-way; and
- Modifications within the Ehrenberg Compressor Station and Ogilby Meter Station to allow for northbound flow.

The proposed route of the B-Line would cross approximately 59 miles of Federal land in Riverside and Imperial Counties. The majority of the route on Federal land follows a designated utility corridor. An amendment to the CDCA Plan would be needed, however, because the proposed route deviates from a designated utility corridor on BLM land at six locations in the CDCA, for a total length of approximately 20 miles. In the locations where the route deviates, it would primarily follow or abut other previously disturbed corridors established by roads such as State Route 78 or Ogilby Road and would lie within North Baja's existing permanent right-of-way. About 2.3 miles of the B-Line would cross the Milpitas Wash SMA. An amendment to the Yuma District Plan would be needed for this crossing because the plan prohibits the location of new utility facilities in SMAs.

In association with its proposed expansion, North Baja proposes to construct a 0.5-mile-long, buried 12-inch-diameter pipeline lateral³ (Blythe Energy Interconnect Lateral) and associated metering and valving from the proposed Blythe Meter Station north to an interconnect with Blythe Energy's existing supply lateral near Interstate Highway 10 in Riverside County. The lateral would cross privately owned land adjacent to the existing SoCal Gas pipelines and parallel to the D-10-13 Canal and Riviera Drive. North Baja's preferred alignment would be on the east side of the canal; an alternative alignment on the west side of the canal is also under consideration. The Blythe Energy Interconnect Lateral would provide 82,320 dekatherms per day of natural gas to the existing Blythe Energy Facility west of Blythe. These volumes would provide diversification of natural gas supplies to Blythe Energy and would not increase the existing level of electrical generation.

North Baja also proposes to construct a new pipeline lateral and associated facilities in Imperial County from an interconnect near the Ogilby Meter Station to the existing Imperial Irrigation District (IID) El Centro Generating Station. The lateral would deliver up to 100 million cubic feet per day of natural gas to the IID El Centro

Generating Station. The IID is considering a future expansion of the station to meet growing power demand.

The IID Lateral facilities proposed by North Baja include:

- Approximately 46 miles of buried 16-inch-diameter pipeline lateral (IID Lateral);
- One metering station at the interconnect with the IID El Centro Generating Station (IID El Centro Meter Station);
- One pig launcher at a tap off the A-Line near the Ogilby Meter Station;
- One pig receiver at the IID El Centro Generating Station; and
- Up to five block valves along the right-of-way.

North Baja's preferred route of the IID Lateral would cross approximately 30 miles of Federal land in Imperial County. The route on Federal land deviates from designated utility corridors at one location for about 10 miles, where it would parallel Interstate Highway 8. Most of the IID Lateral would be installed in public road rights-of-way.

Figures of the proposed facilities are provided in Appendix 1.⁴ Figure 1 depicts a general overview of the major Project facilities. Figure 1 also depicts North Baja's preferred route for the B-Line in the Palo Verde Valley (adjacent to the A-Line along 18th Avenue) and an alternative route under consideration in the Palo Verde Valley along 22nd Avenue. Figure 2 depicts North Baja's preferred route for the IID Lateral and various alternative routes under consideration.

North Baja anticipates that the final transportation precedent agreements⁵ for capacity on the B-Line facilities will dictate the phasing of additional pipeline capacity; therefore, the B-Line facilities would be constructed in phases. It is anticipated that Phase I would be constructed in 2007; Phase II would be constructed in 2008 or 2009. North Baja states that a third phase may be necessary depending on future LNG

import capability and market demand. The actual amount of pipeline loop that would be required in each phase is unknown at this time; however, North Baja expects that the entire 80 miles of its system may eventually need to be looped. The approximate duration of construction for each phase of the B-Line facilities is 4 months. Construction of the Blythe Energy Interconnect Lateral and associated metering and valving facilities is anticipated to occur in 2007 concurrent with construction of Phase I of the B-Line facilities. North Baja anticipates that construction of the IID Lateral facilities would occur in 2008 or 2009 and would take approximately 4 months.

The EIS/EIR will evaluate the potential environmental impacts of an 80-mile-long loop of the entire North Baja system as well as the proposed lateral facilities. The EIS/EIR will also evaluate the potential environmental impacts of facilities not within the jurisdiction of the lead agencies that may be associated with the proposed Project (e.g., the potential expansion of the IID El Centro Generating Station).

Land Requirements for Construction

Construction of the proposed facilities would require about 1,426.9 acres of land. Following construction, about 286.6 acres would be retained as permanent right-of-way and aboveground facility sites, although if the IID Lateral is built within county road rights-of-way as proposed, the amount of new permanent right-of-way would be reduced to approximately 90 to 100 acres. The remaining 1,140.3 acres of temporary workspace would be restored and allowed to revert to its former use.

B-Line Facilities

The typical construction right-of-way for the B-Line would be up to 100 feet wide, consisting of North Baja's existing 50-foot-wide permanent right-of-way and 50 feet of new temporary workspace. In most areas, about 60 to 80 feet of the construction right-of-way would overlap the previously disturbed right-of-way. Additional right-of-way width and temporary extra workspace would be required at certain feature crossings (e.g., roads, canals) and areas requiring special construction techniques (e.g., steep terrain, locations underlain by excessively sandy soils).

The B-Line would be generally installed within North Baja's existing 50-foot-wide right-of-way using a standard 25-foot offset from the existing A-Line. In the Palo Verde Valley, the B-Line would be installed to the south or east of the A-Line. For the remainder of

³ A lateral is typically a smaller diameter pipeline that takes gas from the main system to deliver it to a customer, local distribution system, or another interstate transmission system.

⁴ The appendices referenced in this notice are not being printed in the **Federal Register**. A copy of this notice, including the appendices, is available on the FERC Internet Web site (<http://www.ferc.gov>) at the "eLibrary" link or from the FERC's Public Reference Room at (202) 502-8371. For instructions on connecting to eLibrary, refer to the end of this notice. A copy of this notice, including the appendices, is also available on the CSLC Internet Web site (<http://www.slc.ca.gov>). The appendices were sent to all those receiving this notice in the mail. Requests for detailed maps of the proposed facilities should be made directly to North Baja via e-mail at David_Dodson@TransCanada.com or by calling 1-866-220-0268.

⁵ A precedent agreement is a binding contract under which one or both parties has the ability to terminate the agreement if certain conditions, such as receipt of regulatory approvals, are not met.

the route, the B-Line would be typically west of the A-Line with the exception of a few areas where the B-Line would cross over to the east to avoid sensitive features. With a few exceptions, North Baja would not require additional permanent right-of-way.

The Blythe Meter Station would require about 4.0 acres of land for construction and operation. The pig receiver at the Ehrenberg Compressor Station would be installed within the existing fence line and would not require additional land. The modifications at the Ehrenberg Compressor Station to allow for northbound flow would also occur within the existing fence line except for about 400 feet of header pipe that would require a temporary disturbance of about 0.7 acre. The additional valving, piping, and pig launcher and receiver at the Ogilby Meter Station would require an expansion of the existing 200-foot by 200-foot site by 100 feet to a 200-foot by 300-foot site. The seven mainline valves would be collocated with the seven existing mainline valves and would require an expansion of the existing 50-foot by 50-foot sites to 75-foot by 150-foot sites.

Blythe Energy Interconnect Lateral Facilities

The typical construction right-of-way for the Blythe Energy Interconnect Lateral would be 80 feet wide. After construction, a 35-foot-wide permanent right-of-way would be retained. The associated metering and valving facilities would be installed within the 4.0-acre site for the proposed Blythe Meter Station.

IID Lateral Facilities

The typical construction right-of-way for the IID Lateral would be 80 feet wide. After construction, a 50-foot-wide permanent right-of-way would be retained. Most of the permanent right-of-way would be in public road rights-of-way. Additional right-of-way width and temporary extra workspace may be required at certain feature crossings and in areas requiring special construction techniques.

The IID El Centro Meter Station would be installed within the existing fence line of the IID El Centro Power Generating Station and would not require additional land. The pig receiver at the IID El Centro Power Generating Station would also be installed within the existing fence line and would not require additional land. The pig launcher and a block valve at the tap off the A-Line near the Ogilby Meter Station would require a 75-foot by 150-foot site. Up to four additional block

valves along the right-of-way would each require 50-foot by 50-foot sites.

The EIS/EIR Process

NEPA requires the FERC to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The CSLC, as the state lead agency, is required to consider the same potential impacts within the State of California under the CEQA. The EIS/EIR the Agency Staffs are preparing will provide this information to the FERC and the CSLC.

Although no formal application has yet been filed with the FERC, the Agency Staffs have begun the environmental review of the Project in accordance with the FERC's Pre-Filing Process. The purpose of the Pre-Filing Process is to seek public and agency input early in the Project planning phase and encourage involvement by interested stakeholders to allow for the early identification and resolution of environmental issues/impacts. The Agency Staffs will work with all interested stakeholders to identify and attempt to address issues/impacts before North Baja files its application with the FERC. A diagram depicting the environmental review process for the Project is attached to this notice as Appendix 2.

The Agency Staffs have already started to meet with North Baja, jurisdictional agencies, and other interested stakeholders to discuss the Project and identify issues/impacts and concerns. On July 6 and 7, 2005, the Agency Staffs participated in public open houses sponsored by North Baja in the Project area to explain the NEPA/CEQA environmental review process to interested stakeholders and take comments about the Project. During September 2005, the Agency Staffs will be conducting interagency scoping meetings in the Project area to solicit comments and concerns from agencies having jurisdiction over the Project. By this notice, the Agency Staffs are formally announcing the preparation of the EIS/EIR and requesting additional agency and public comments to help focus the analysis in the EIS/EIR on the potentially significant environmental issues/impacts related to the proposed action.

The Agency Staffs' independent analyses of the issues/impacts will be included in a Draft EIS/EIR. The Draft EIS/EIR will be mailed to Federal, state, and local government agencies and elected officials; environmental and public interest groups; Native American tribes; affected landowners; other

interested parties; local libraries and newspapers; and the FERC's official service list for this proceeding. A 90-day comment period will be allotted for review of the Draft EIS/EIR. The Agency Staffs will consider all timely comments on the Draft EIS/EIR and revise the document, as necessary, before issuing a Final EIS/EIR.

The BLM's Plan Amendment Process

As discussed above, the BLM will use the EIS/EIR to consider amending the CDCA Plan (as amended) and the Yuma District Plan. Publication of this notice formally initiates the plan amendment process and begins the scoping process.

The BLM regulations in Title 43 Code of Federal Regulations (CFR) part 1600 and the NEPA process detailed in the Council on Environmental Quality regulations in Title 40 CFR parts 1500–1508 guide preparation of plan amendments. The process is tailored to the anticipated level of public interest and potential for significant impacts.

Plan amendments (see Title 43 CFR part 1610.5-5) change one or more of the terms, conditions, or decisions of an approved land use plan. These decisions may include those relating to desired outcomes; measures to achieve desired outcomes, including resource restrictions; or land tenure decisions. Plan amendments are required to consider any proposal or action that does not conform to the plan.

An applicant may request that the BLM amend the land use plan to allow an otherwise non-conforming proposal. The amendment and any implementation actions (*i.e.*, granting the Right-of-Way and Temporary Use Permit) may be considered together. However, at the decision stage, the land use plan decisions must be separated from the implementation decisions.

Additional information regarding the plan amendment process can be found in the BLM's Land Use Planning Handbook (http://www.blm.gov/nhp/200/wo210/landuse_hb.pdf).

Currently Identified Environmental Issues/Impacts

The EIS/EIR will discuss a wide range of impacts that could occur as a result of the construction and operation of the proposed Project. The Agency Staffs have already identified a number of specific issues/impacts that deserve attention based on a preliminary review of the proposed facilities, the environmental information provided by North Baja, and comments received to date. This preliminary list of issues/impacts may be changed based on your comments and the additional analysis of the Agency Staffs.

provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

In addition, the FERC now offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. To register for this service, go to the eSubscription link on the FERC Internet Web site.

Information concerning the involvement of the CSLC in the EIS/EIR process may be obtained from Sarah Mongano, Project Manager, at (916) 574-1889, or on the CSLC Internet Web site at <http://www.slc.ca.gov>.

Information concerning the proposed land use plan amendments and the involvement of the BLM in the EIS/EIR and plan amendment process may be obtained from Lynda Kastoll, Project Manager, at (760) 337-4421.

Finally, North Baja has established an Internet Web site at http://www.northbajapipeline.com/lng_expansion/. The Web site includes a description of the Project, a proposed Project schedule, North Baja's answers to frequently asked questions, and links to related documents. North Baja will continue to update its Web site with information about the Project.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4859 Filed 9-6-05; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02-1656-000]

California Independent System Operator Corporation; Notice of FERC Staff Attendance

August 29, 2005.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff will attend a series of stakeholder meetings on the California Independent System Operator Corporation's (CAISO) Market Redesign and Technology Upgrade proposal on the following dates:

August 30-September 1, 2005.
September 20-22, 2005.
October 24-28, 2005.

The meetings will be held at the CAISO's facility, located at 151 Blue Ravine Road, Folsom, CA 95630.

Sponsored by the CAISO, the meetings are open to the public, and staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in Docket No. ER02-1656-000.

For further information, contact Katherine Gensler at katherine.gensler@ferc.gov; (916) 294-0275.

Magalie R. Salas,
Secretary.

[FR Doc. E5-4861 Filed 9-6-05; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2004-0266; FRL-7734-1]

Chromated Copper Arsenate (CCA); Amendment to Terminate a Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order granting amendments to terminate uses, voluntarily requested by the registrant(s) and accepted by the Agency, of products containing the pesticide Chromated Copper Arsenate (CCA), pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a September 8, 2004 **Federal Register** Notice of Receipt of Requests (69 FR 54278) from the CCA registrants to voluntarily amend their affected product registrations to terminate the use "members out of water and not subject to salt water [or brackish water] splash, and not in soil use," as currently stated under American Wood Preservers' Association (AWPA) Standard C18 (Wood for Marine Construction). The registrants requested that these use terminations become effective December 31, 2004. For further information, please refer to the CCA guidance document at http://www.epa.gov/pesticides/factsheets/chemicals/cca_awpa_june.pdf. In the September 8, 2004 Notice, EPA indicated that it intended to issue a cancellation order implementing the amendments to terminate the use. All affected CCA registrants waived the 180-day comment period (i.e., any comment period in excess of 30 days). Accordingly, EPA hereby issues in this notice a cancellation order granting the requested amendments to terminate the

uses. Any distribution, sale, or use of the CCA products subject to this cancellation order is permitted only in accordance with the terms of this cancellation order, including any existing stocks provisions.

DATES: The cancellations are effective September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Rebecca Miller, Antimicrobials Division (7510C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-0012; fax number: (703) 308-8481; e-mail address: miller.rebecca@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP-2004-0266. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet

under the “Federal Register” listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA’s electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select “search,” then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces issuance of a cancellation order granting amendments to terminate certain uses on pesticide products containing CCA that are registered under section 3 of FIFRA. The use terminations requested by the registrants affect “members out of water and not subject to salt water [or brackish water] splash, and not in soil use,” as currently stated under American Wood Preservers’ Association (AWPA) Standard C18 (Wood for Marine Construction). The affected registrations are listed in sequence by registration number in Table 2 of this unit.

TABLE 1.—REGISTRANTS REQUESTING VOLUNTARY AMENDMENT TO TERMINATE USES OF PRODUCTS

| EPA Company No. | Company Name and Address |
|-----------------|--|
| 62190 | Arch Wood Protection, Inc., 1955 Lake Park Drive, Suite 250 Smyrna, GA 30080 |
| 10465 | Chemical Specialties, Inc., One Woodlawn Green Charlotte, NC 28217 |
| 3008 | Osmoste, Inc., 980 Ellicott Street Buffalo, NY 14209–2398 |

TABLE 2.—REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO TERMINATE CERTAIN USES

| EPA Registration No. | Product Name |
|-------------------------------|-------------------------------------|
| End Use Products ¹ | |
| 003008-17 | K-33-C (72%) Wood Preservative |
| 003008-21 | Special K-33 Preservative |
| 003008-34 | K-33 (60%) Wood Preservative |
| 003008-35 | K-33 (40%) Type-B Wood Preservative |
| 003008-36 | K-33-C (50%) Wood Preservative |
| 003008-42 | K-33-A (50%) Wood Preservative |
| 003008-72 | Osmoste Arsenic Acid 75% |
| 010465-26 | CCA Type-C Wood Preservative 50% |
| 010465-28 | CCA Type-C Wood Preservative 60% |
| 010465-32 | CSI Arsenic Acid 75% |
| 062190-2 | Wolmanac Concentrate 50% |
| 062190-8 | Wolmanac Concentrate 72% |
| 062190-14 | Wolmanac Concentrate 60% |
| Manufacturing Use Products | |
| 003008-66 | Arsenic Acid 75% |
| 010465-32 | CSI Arsenic Acid 75% |
| 062190-7 | Arsenic Acid 75% |

¹The September 8, 2004 FEDERAL REGISTER notice mistakenly referenced these products as “experimental use permit” products. This clerical error did not affect the efficacy of that notice or this action in any way. That erroneous reference is hereby corrected by this footnote.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the September 8, 2004 Federal Register notice announcing the Agency’s receipt of the requests for voluntary cancellations and/or amendments to terminate certain uses of CCA.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves, through this cancellation order, the requested amendments to terminate certain uses of CCA registrations identified in Table 2 of Unit II. Accordingly, the Agency orders that the CCA product registrations identified in Table 2 of Unit II. are hereby amended to terminate the affected uses.

The affected products must bear the following label language in order to be in compliance with this order:

Revised Language End Use Product (EUP)

This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers’ Association (AWPA) Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood(C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations(C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34); and in accordance with the respective cited standard (noted parenthetically) of the 2002 edition of the American Wood-Preservers’ Association Standards: Lumber, Timbers and Plywood for Cooling Towers (C30). Forest products treated with this product may only be sold or distributed for uses within the AWPA Commodity Standards under which the treatment occurred.

Effective December 31, 2004, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers’ Association (AWPA) Standards: Lumber and Timber for Salt Water Use (also includes brackish water) Only (C2), Piles (C3), Poles (C4), Plywood(C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction for Salt Water Use (also includes brackish water)(immersion and/or subject to saltwater (or brackish water) splash [“subject to saltwater (or brackish water) splash” means any member of a marine structure which is positioned above mean high tide, but is subject to frequent wetting from wave action], [Pilings (sheet, round and square), Timbers, and Plywood; Walers, Framing, Stringers and Cross Bracing (2” x 8” and/or 3” x 6” and

larger nominal dimensions and treated to a minimum of 0.60 pcf) (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34); and in accordance with the respective cited standard (noted parenthetically) of the 2002 edition of the American Wood-Preservers' Association Standards: Lumber, Timbers and Plywood for Cooling Towers (C30). Forest products treated with this product may only be sold or distributed for uses within the AWP Commodity Standards under which the treatment occurred, except where otherwise provided above.

Revised Language Manufacturing Use Product (MUP)

This product may only be used (1) for formulation of the following end-use wood preservative products: Ammoniacal copper zinc arsenate (ACZA) or chromated copper arsenate (CCA) labeled in accordance with the Directions for Use shown below, or (2) by persons other than the registrant, in combination with one or more other products to make: ACZA wood preservative; or CCA wood preservative that is used in accordance with the Directions for Use shown below.

This product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association (AWPA) Standards: Lumber and Timber for Salt Water Use Only (C2), Piles (C3), Poles (C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glued Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34); and in accordance with the respective cited standard (noted parenthetically) of the 2002 edition of the American Wood-Preservers' Association Standards: Lumber, Timbers and Plywood for Cooling Towers (C30). Forest products treated with this product may only be sold or distributed for uses within the AWP Commodity Standards under which the treatment occurred.

Effective December 31, 2004, this product may only be used for preservative treatment of the following categories of forest products and in accordance with the respective cited standard (noted parenthetically) of the 2001 edition of the American Wood-Preservers' Association (AWPA) Standards: Lumber and Timber for Salt Water Use (also includes brackish water) Only (C2), Piles (C3), Poles

(C4), Plywood (C9), Wood for Highway Construction (C14), Round, Half Round and Quarter Round Fence Posts (C16), Poles, Piles and Posts Used as Structural Members on Farms, and Plywood Used on Farms (C16), Wood for Marine Construction for Salt Water Use (also includes brackish water) (immersion and/or subject to saltwater (or brackish water) splash ["subject to saltwater (or brackish water) splash" means any member of a marine structure which is positioned above mean high tide, but is subject to frequent wetting from wave action], [Pilings (sheet, round and square), Timbers, and Plywood; Walers, Framing, Stringers and Cross Bracing (2" x 8" and/or 3" x 6" and larger nominal dimensions and treated to a minimum of 0.60 pcf) (C18), Lumber and Plywood for Permanent Wood Foundations (C22), Round Poles and Posts Used in Building Construction (C23), Sawn Timber Used To Support Residential and Commercial Structures (C24), Sawn Crossarms (C25), Structural Glue Laminated Members and Laminations Before Gluing (C28), Structural Composite Lumber (C33), and Shakes and Shingles (C34); and in accordance with the respective cited standard (noted parenthetically) of the 2002 edition of the American Wood-Preservers' Association Standards: Lumber, Timbers and Plywood for Cooling Towers (C30). Forest products treated with this product may only be sold or distributed for uses within the AWP Commodity Standards under which the treatment occurred, except where otherwise provided above.

Furthermore, any distribution, sale, or use of existing stocks of the products identified in Table 2 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit VI. will be considered a violation of FIFRA.

V. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

The registrants of affected CCA products requested that the voluntary

use terminations become effective December 31, 2004, with no provisions for existing stocks. Consequently, the Agency is not allowing for any existing stocks provisions for those affected products in the hands of the registrant on or after the effective date of the use terminations. Any sale, distribution, or use of those affected products on or after the effective date of this cancellation order is prohibited. This refers to CCA product labels that bear the C18 Marine Use, "members out of water and not subject to saltwater [or brackish water] splash and not in soil use," and which do not bear labeling consistent with that set forth in Unit IV. above. Sale, distribution or use of the stocks in the channels of trade by persons other than the registrant may continue until depleted, provided any sale, distribution or use is in accordance with the existing label of that product.

List of Subjects

Environmental protection, Pesticides and pests, Chromated Copper Arsenate, CCA, and Treated Wood.

Dated: August 25, 2005.

Frank Sanders,

*Acting Director, Antimicrobials Division,
Office of Pesticide Programs.*

[FR Doc. 05-17530 Filed 9-6-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[OPP-2005-0215; FRL-7731-1]

Terbacil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP-2005-0215, must be received on or before October 7, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **INSTRUMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs,

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP-2005-0215. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305-5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be

scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP-2005-0215. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or

other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP-2005-0215. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001, Attention: Docket ID Number OPP-2005-0215.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP-2005-0215. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public

docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 3E6640

EPA has received a pesticide petition (PP 3E6640) from Interregional Research Project Number 4 (IR-4) on behalf of DuPont Crop Protection, P.O. Box 30, Newark, Delaware 19714-0030, proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide, terbacil (3-tert-butyl-5-chloro-6-methyluracil) and its metabolites [3-tert-butyl-5-chloro-6-hydroxymethyluracil], [6-chloro-2,3-dihydro-7-hydroxymethyl 3,3-dimethyl-5H-oxazolo(3,2-a)pyrimidin-5-one], and [6-chloro-2,3-dihydro-3,3,7-trimethyl-5H-oxazolo(3,2-a)pyrimidin-5-one] in or on the raw agricultural commodity watermelon at 1.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition that was prepared by DuPont Crop Protection.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism and chemical nature of residues of terbacil in plants and animals are adequately understood. The fate of terbacil has been extensively studied using radioactive tracers in plant and animal metabolism/nature of the residue studies.

2. *Analytical method.* There is a practical analytical method utilizing microcoulometric gas chromatography with thermionic or nitrogen

phosphorous detection available for enforcement with a limit of detection that allows monitoring food with residues at or above tolerance levels. The limit of detection for the method determined by the lowest standard of 0.5 nanogram per microliter (ng/ μ l) was 0.05 ppm.

3. *Magnitude of residues.* Crop field trial residue data from a 69- to 94-day preharvest interval (PHI) study show that the proposed tolerance in or on watermelon at 1.0 ppm will not be exceeded when DuPont Sinbar (trade name) herbicide is used as directed.

B. Toxicological Profile

1. *Acute toxicity.* Terbacil technical has been placed in EPA Toxicity Category III for acute oral toxicity (rat lethal dose (LD₅₀) 934 milligram/kilogram (mg/kg) in female rats; 1,255 mg/kg in male rats); Category IV for acute inhalation lethal concentration (LC₅₀) >4.4 milligrams per liter (mg/L) in rats); Category IV for acute dermal (rabbit LD₅₀ >5,000 mg/kg); and Category III for primary eye irritation (mild conjunctival effects clearing in 72 hours in rabbits). Although a primary dermal irritation study is not available on terbacil technical, the Agency indicated to the Registrant that if no dermal irritation was observed in a 21-day sub-chronic dermal study, then the requirements for the primary dermal irritation study would be satisfied. No dermal irritation was reported in that study. A dermal sensitization test on terbacil in guinea pigs showed no dermal sensitization.

2. *Genotoxicity.* Terbacil technical was tested and found negative in a Chinese hamster ovary (CHO) Hypoxanthine guanine phosphoribosyl transferase (HGPRT) gene mutation assay when tested up to cytotoxic levels, with and without S-9 activation (cytotoxicity >3.0 micromolar (mM) without activation; >2.75 mM with activation). Terbacil technical was also negative for unscheduled DNA synthesis when tested up to cytotoxic levels (5 mM) in the rat. It was also negative for clastogenicity in a chromosomal aberration study in rat bone marrow cells, at doses up to 500 mg/kg.

3. *Reproductive and developmental toxicity.* Terbacil was tested in male and female rats at control and dietary levels of 50 or 250 ppm (equivalent to 2.5 or 12.5 mg/kg/day, over three generations. The first litter of each generation was discarded, and the second litter bred to produce the next generation. No reproductive effects were seen at the highest dose tested. Therefore, the no observed adverse effect level (NOAEL)

for reproductive toxicity was equal to or greater than 250 ppm (12.5 mg/kg/day).

Terbacil has been tested in rats and rabbits for its potential to produce developmental toxicity. Rats were fed 0, 250, 1,250 or 5,000 ppm (equivalent to 0, 12.5, 62.5, or 250 mg/kg/day) of terbacil in the diet from days 6 through 15 of gestation. The developmental NOAEL was 250 ppm (12.5 mg/kg/day); the developmental LOAEL of 1,250 ppm (62.5 mg/kg/day) was based upon significantly decreased numbers of live fetuses per litter, apparently due to fetal loss occurring before or near the time of implantation. The maternal NOAEL was 250 ppm (12.5 mg/kg/day), based on decreased body weight at 1,250 ppm (62.5 mg/kg/day). Teratogenicity in pregnant rats was not demonstrated.

Rabbits were given doses of terbacil of 0, 30, 200, or 600 mg/kg/day by gavage, on gestation days 7 through 19. The maternal NOAEL was 200 mg/kg/day, based on maternal deaths (5 died and 2 were sacrificed in extremis) at the LOAEL of 600 mg/kg/day. The developmental NOAEL was also 200 mg/kg/day based on decreased live fetal weights in the high dose group. Teratogenicity in pregnant rabbits was not demonstrated.

4. *Subchronic toxicity.* Subchronic oral toxicity was tested in a 90-day feeding study in rats. A NOAEL of 100 ppm (equivalent to 5 mg/kg/day) and a LOAEL of 500 ppm, equivalent to 25 mg/kg/day highest dose tested (HDT) were established, based on increased absolute and relative liver weights, vacuolization and hypertrophy of hepatocytes. The data requirement for subchronic oral toxicity in a nonrodent was satisfied by a 2-year feeding study in beagle dogs, in which a NOAEL of 50 ppm (equivalent to 1.25 mg/kg/day) and a LOAEL of 250 ppm (equivalent to 7.2 mg/kg/day) were established, based on increased thyroid to body weight ratios, slight increase in liver weights, and elevated alkaline phosphatase levels.

Subchronic dermal toxicity was tested in a 21-day study in rabbits. Terbacil (80% active ingredient (a.i.)) was applied to prepared skin of male and female rabbits at 5,000 mg/kg/day, 5 hours/day, 5 days/week. No systemic toxicity was observed; mild scaling and staining were reported at the test sites.

5. *Chronic toxicity.* Terbacil 80% a.i. was administered to beagle dogs (4/sex/group) in the diet for 2 years, at doses of 50, 250, or 2,500/10,000 ppm (equivalent to 1.25, 6.25, 62.5/250 mg/kg/day). The NOAEL was 50 ppm (1.25 mg/kg/day) and the LOAEL was 250 ppm (6.25 mg/kg/day) based on increased thyroid to body weight ratios, slight increase in liver weights, and

elevated alkaline phosphatase levels. Relative liver weights were also increased at 2,500 and 10,000 ppm in dogs sacrificed at 1 year and 2 years, respectively.

A 2-year rat study was conducted using terbacil 97.4% a.i. administered to male and female rats at dietary levels of 0, 25, 1,500, or 7,500 ppm (approximate doses for males of 0, 0.9, 58, and 308 mg/kg/day and for females of 0, 1.4, 83/484 mg/kg/day). The systemic NOAEL is 25 ppm and the LOAEL is 1,500 ppm based on liver weight and centrilobular hypertrophy. The study was conducted at adequate dosages as demonstrated by the decrement in body weight gain in both sexes. There was no evidence of increased tumor incidence in the treated animals when compared to the controls.

Terbacil has been tested in a chronic 2-year feeding/oncogenicity study in mice at doses of 0, 50, 1,250, or 5,000/7,500 ppm (equivalent to 7, 179, 714/1,071 mg/kg/day). The increase in dose occurred after week 54. A systemic NOAEL of 50 ppm is based on the LOAEL of 1,250 ppm that resulted in mild hypertrophy of the centrilobular hepatocytes and decreased pituitary weights in males. Pituitary weight was also decreased in high-dose females. There was an increased incidence of lung neoplasms (adenomas and adenocarcinomas) in all treated male mice, which was not dose-related; in addition, these tumors were within the range of similar tumors observed in historical control mice.

6. *Animal metabolism.* Radiolabeled terbacil was tested in rats in single doses of 6.5 or 500 mg/kg; 97-103% of radioactivity was recovered within 5 days: 70-86% in urine, and 28% in feces. The major metabolites were glucuronide, sulfate, and N-acetylcysteine conjugates. The primary metabolic pathway is hydroxylation of the 6-methyl group to form the alcohol, which is conjugated to form the glucuronide (35% of the dose) and the sulfate derivatives (11%). Terbacil is also metabolized to the 5-hydroxy intermediate, which is further conjugated to form a sulfate derivative (17%).

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance appropriate for regulation in plant and animal commodities.

8. *Endocrine disruption.* No observed effects reported.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Tolerances have been established for the residues of terbacil in or on a variety of agricultural commodities. For purposes

of assessing dietary exposure, chronic and acute dietary assessments have been conducted using all existing and pending tolerances for terbacil. To estimate acute dietary risk, the endpoint selected was based on a rat development toxicity study in which the maternal and fetal NOAEL were 12.5 mg/kg/day. The reference dose (RfD) for systemic toxicity was determined for terbacil as 0.013 mg/kg/day, by the Agency's RfD committee in 1986. The RfD was calculated from a 2-year feeding study in dogs in which the NOAEL was 1.25 mg/kg/day (based on increased relative liver weights and increased serum alkaline phosphatase, seen at 7.25 mg/kg/day), and an uncertainty factor of 100. The RfD of 0.013 mg/kg/day was reaffirmed by the Agency's RfD Committee on September 1, 1994.

A Tier 1 (screening) assessment was conducted by DuPont; tolerance values, indicated below, were used in the assessment with no adjustments for processing or usage. (Alfalfa feed commodities are not included in the assessment because they are not consumed by humans.)

| Commodity | Tolerance (ppm) |
|-----------------------------|-----------------|
| Apple | 0.3 |
| Asparagus | 0.4 |
| Blueberry | 0.2 |
| Caneberry Crop Subgroup 13B | 0.2 |
| Peach | 0.2 |
| Peppermint | 2.0 |
| Spearmint | 2.0 |
| Strawberry | 0.1 |
| Sugarcane | 0.4 |
| Watermelon | 1.0 (proposed) |

The chronic risk values were calculated with a chronic reference dose (cRfD) of 0.013 mg/kg body weight (bwt)/day. The chronic dietary exposure for the U.S. population was 0.000725 mg/kg bwt/day (5.6% of the cRfD). The most sensitive subpopulation was children 1-6 years old with a chronic dietary exposure of 0.002991 mg/kg bwt/day (23.0% of the cRfD).

The acute risk values were calculated with an acute reference dose (aRfD) of 0.125 mg/kg bwt/day. The acute dietary exposure (at the 95th percentile) for the U.S. population was 0.003071 mg/kg bwt/day (2.5% of aRfD). The most sensitive subpopulation was children 1-

2 years old with an acute dietary exposure (at the 95th percentile) of 0.015641 mg/kg bwt/day (12.5% aRfD).

These results of Tier 1 (screening) assessments support the registrant's view that there is reasonable certainty of no harm from the use of this product as labeled/proposed.

Terbacil is classified as a Group E carcinogen—no evidence of carcinogenicity in either rats or mice. Therefore, a carcinogenicity risk analysis for humans is not required.

ii. *Drinking water.* Other potential dietary sources of exposure of the general population to pesticides are residues in drinking water.

For acute drinking water risk, the Drinking Water Levels of Concern (DWLOCs) were calculated using an aRfD (acute) endpoint of 0.125 mg/kg and compared to surface water or ground water EEC (estimated environmental concentration) values of 0.154 ppm and 0.125 ppm, respectively. The DWLOC values are as follows:

| Population Subgroups | DWLOC Values (ppm) |
|----------------------|--------------------|
| U.S. Population | 4.3 |
| Non-Nursing Infants | 1.1 |
| Children 1-6 Years | 1.1 |
| Children 7-12 Years | 1.2 |
| Females 13+ Nursing | 3.6 |
| Males 13-19 Years | 4.3 |
| Seniors 55+ | 4.3 |

For chronic drinking water risk, the DWLOCs were calculated using a cRfD (chronic) endpoint of 0.013 mg/kg and compared to surface water or ground water EEC values of 0.105 ppm and 0.0089 ppm, respectively. The DWLOC values are as follows:

| Population Subgroups | DWLOC Values (ppm) |
|----------------------|--------------------|
| U.S. Population | 0.43 |
| Non-Nursing Infants | 0.10 |
| Children 1-6 years | 0.10 |
| Children 7-12 Years | 0.12 |
| Females 13+ Nursing | 0.36 |
| Males 13-19 years | 0.43 |
| Seniors 55+ | 0.44 |

The estimated environmental concentrations are within acceptable

ranges. Because of the conservative nature of the screening level dietary assessments performed, and the fact that actual ground water monitoring data, although limited, are not showing large amounts of terbacil present, DuPont does not believe that drinking water sources of terbacil are of concern.

2. *Non-dietary exposure.* Terbacil is not registered for any use that could result in non-occupational, non-dietary exposure to the general population. Alfalfa feed commodities were not included in the assessment because they are not consumed by humans.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency considers "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

In assessing the potential risk from cumulative effects of terbacil and other chemical substances, the Agency has considered structural similarities that exist between terbacil and other substituted uracil compounds such as bromacil and lenacil.

A comparison of the available toxicological database for terbacil and bromacil revealed no clear common mode of toxicity for these chemicals. The toxicology database for lenacil was not considered because there are currently no registered uses of lenacil. A summary of the most prominent clinical

signs from terbacil and bromacil follows.

The following clinical signs were observed in the terbacil toxicology database: Decrease in body weight, increase in liver weights, vacuolization and hypertrophy of hepatocytes, hypertrophy of centrilobular hepatocytes in males, decreased pituitary weights in males and females, increase in thyroid/body weight ratio, and elevated alkaline phosphatase.

The following clinical signs were observed in the bromacil toxicology database: Decreased body weight, focal atrophy of seminiferous tubules (testicular abnormalities), hydronephrosis, suggestive histological evidence for antithyroid activity (cystic follicles in the thyroid and enlargement of centrilobular cells of the liver), and a positive trend in thyroid tumors for male rats (basis of C classification for carcinogenicity).

Based on these data, DuPont concludes that there is no clear common mode of toxicity (thyroid or liver) between terbacil and bromacil. With both chemicals, there is marginal evidence of liver effects (principally enlargement of centrilobular cells). Enlargement of liver cells is not a specific enough effect to be considered a common mode of toxicity. The thyroid effects observed with bromacil were cystic follicles. Terbacil induced an increase in relative thyroid weights but no increase in absolute thyroid weights. An increase in relative weight without a corresponding increase in absolute weight has very little meaning, especially without any supporting histological or hormonal evidence. This conclusion was based on the marginal liver effects noted in the databases, and the absence of thyroid effects in the terbacil database (with the exception of increases in relative thyroid weights).

DuPont has no information indicating that any other chemical has a common mode of toxicity with terbacil and, therefore concludes that an aggregate risk assessment will indicate risks resulting only from terbacil.

E. Safety Determination

1. *U.S. population.* EPA has determined that the established tolerances for terbacil meet the safety standards under the FQPA amendments to section 408(b)(2)(D) for the general population. In reaching this determination, EPA has considered available information on aggregate exposures (both acute and chronic) from non-occupational sources, food and drinking water, as well as the possibility of cumulative effects from terbacil and

other chemicals with similar mechanism of toxicity.

Since there are no residential or lawn uses of terbacil, no dermal or inhalation exposure is expected in and around the home.

In assessing acute dietary risk from food, the endpoint selected was developmental toxicity. Because the endpoint of concern is a developmental effect, the only sub-population of concern is females of child-bearing age (i.e., females, 13+ years old).

The acute risk values were calculated by DuPont with an aRfD of 0.125 mg/kg bwt/day. The acute dietary exposure (at the 95th percentile) for the U.S. population was 0.003071 mg/kg bwt/day (2.5% of aRfD). The most sensitive subpopulation was children 1-2 years old with an acute dietary exposure (at the 95th percentile) of 0.015641 mg/kg bwt/day (12.5% aRfD).

The chronic risk values were calculated by DuPont with a cRfD of 0.013 mg/kg bwt/day. The chronic dietary exposure for the U.S. population was 0.000725 mg/kg bwt/day (5.6% of the cRfD). The most sensitive subpopulation was children 1-6 years old with a chronic dietary exposure of 0.002991 mg/kg bwt/day (23.0% of the cRfD).

In evaluating the potential for cumulative effects, EPA compared terbacil with other structurally similar substituted uracil compounds, such as bromacil and lenacil, and then with other compounds producing similar effects. A comparison of the available toxicological database for terbacil and bromacil revealed no clear common mode of toxicity for the chemicals. The toxicology database for lenacil was not considered because there are currently no registered uses of lenacil. Based on the available data, the Agency has determined that there is no clear common mode of toxicity between terbacil and bromacil.

2. *Infants and children.* EPA has determined that the established tolerances for terbacil meet the safety standard under the FQPA amendment to section 408(b)(2)(C) for infants and children. The safety determination for infants and children considers the factors noted above for the general population, but also takes into account the possibility of increased dietary exposure due to the specific consumption patterns of infants and children, as well as the possibility of increased susceptibility to the toxic effects of terbacil residues in this population subgroup.

In determining whether or not infants and children are particularly susceptible to toxic effects from terbacil residues,

EPA considered the completeness of the database for developmental and reproductive effects, the nature of the effects observed, and other information.

Based on current data requirements, terbacil has a complete database for developmental and reproductive toxicity. Because the developmental NOAELs were the same as those for maternal toxicity, and the NOAEL for systemic (parental) toxicity was higher than the NOAEL for reproductive toxicity, DuPont believes that these data do not suggest an increased pre- or post-natal sensitivity of children and infants to terbacil exposure. Therefore, DuPont concludes that the available toxicology data do not support an uncertainty factor of 1,000 as specified in FQPA and that the present uncertainty factor of 100 is adequate to ensure the protection of infants and children from exposure to terbacil.

It is estimated by DuPont that terbacil exposure from the chronic diet is as follows: All infants less than 1 year—18% of the cRfD; Nursing infants—9.7% of the cRfD; Non-nursing infants—21.2% of the cRfD; Children 1-6 years—23% of the cRfD.

F. International Tolerances

There are no established Codex maximum residue levels (MRL's) or international tolerances for terbacil on watermelon.

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ENVIRONMENTAL PROTECTION AGENCY

[OPPT-2005-0045; FRL-7735-9]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which

covers the period from July 25, 2005 to August 12, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT-2004-0045 and the specific PMN number or TME number, must be received on or before October 7, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT:

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 554-1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT-2004-0045. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to

4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566-1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566-0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at <http://www.epa.gov/fedrgstr/>.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA

identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification,

EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at <http://www.epa.gov/edocket/>, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT-2004-0045. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov. Attention: Docket ID Number OPPT-2004-0045 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT-2004-0045 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the DCO is (202) 564-8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from July 25, 2005 to August 12, 2005, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 07/25/05 TO 08/12/05

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical | |
|-----------|---------------|---------------------------|-----------------------------|--|---|----|
| P-05-0700 | 07/26/05 | 10/23/05 | Wacker Chemical Corporation | (S) Crosslinker for silane-terminated polymers | (S) Cyclohexanamine, n-[(diethoxymethylsilyl)methyl]- | n- |

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 07/25/05 TO 08/12/05—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|-----------|---------------|---------------------------|-----------------------------------|---|---|
| P-05-0701 | 07/28/05 | 10/25/05 | CBI | (G) Colourant | (G) Sulphonated azo dye |
| P-05-0702 | 07/28/05 | 10/25/05 | CBI | (G) Colourant | (G) Sulphonated azo dye |
| P-05-0703 | 07/29/05 | 10/26/05 | Cytec Surface Specialties Inc. | (G) Resin coating | (G) 1,4-benzenedicarboxylic acid, polymer with alkenedioic acid, alkyl diols, and, 2-hydroxy-3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl ester |
| P-05-0704 | 07/29/05 | 10/26/05 | CBI | (G) Adhesive | (G) Silylated urethane resin |
| P-05-0705 | 07/29/05 | 10/26/05 | CBI | (G) Adhesive | (G) Silylated urethane resin |
| P-05-0706 | 08/02/05 | 10/30/05 | BASF Corporation | (S) Component for pur shoe soling | (G) Isocyanate prepolymer |
| P-05-0707 | 08/02/05 | 10/30/05 | CBI | (G) Viscosity enhancer for water-soluble polymers | (G) Halogenated n,n,n-trialkyl-alkylamminium, n-aminocarbonylalkenyl |
| P-05-0708 | 08/03/05 | 10/31/05 | Daicolor USA, Inc. | (G) Additive for colorants used in inks and coatings | (G) Anthraquinone derivatives |
| P-05-0709 | 08/03/05 | 10/31/05 | Daicolor USA, Inc. | (G) Additive to improve dispersibility and rheology of pigments used in inks and paints | (G) Quinacridone derivative |
| P-05-0710 | 08/04/05 | 11/01/05 | CBI | (G) Acid inhibitor | (G) Complex keto-amine |
| P-05-0711 | 08/04/05 | 11/01/05 | CBI | (G) Matting agent for paint/film coating | (G) Methylmethacrylate-styrene cross-linked polymer |
| P-05-0712 | 08/04/05 | 11/01/05 | CBI | (G) Matting agent for paint/film coating | (G) Methylmethacrylate-styrene cross-linked polymer |
| P-05-0713 | 08/05/05 | 11/02/05 | Hercules Incorporated | (G) Papermaking chemical | (G) Alkyl ester |
| P-05-0714 | 08/08/05 | 11/05/05 | Elementis Specialities, Inc. | (G) Rheological additive | (G) Polyether ester acid compound with a polyamine amide |
| P-05-0715 | 08/09/05 | 11/06/05 | Royal Adhesives and Sealants, LLC | (S) Resin for adhesion promotion | (G) Polysulfide adduct |
| P-05-0716 | 08/10/05 | 11/07/05 | CBI | (S) Organic salt for dissolving inorganic soils | (G) Urea, salt |
| P-05-0717 | 08/10/05 | 11/07/05 | Ethox Chemicals, LLC | (G) dispersing agent | (S) Poly(oxy-1,2-ethanediyl),.alpha.-(3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-indene-5-yl)-.omega.-hydroxy- |
| P-05-0718 | 08/10/05 | 11/07/05 | Ethox Chemicals, LLC | (G) dispersing agent | (S) Oxirane, methyl-, polymer with oxirane, mono(3a,4,5,6,7,7a-hexahydro-4,7-methano-1h-inden-5-yl) ether |
| P-05-0719 | 08/10/05 | 11/07/05 | CBI | (G) Adhesive / sealant component | (G) Polymer of carbomonocyclic diisocyanate, a modified polyalkene, hydroxyalkane and a substituted alkoxy silane. |
| P-05-0720 | 08/11/05 | 11/08/05 | CBI | (G) Inks and coatings additive | (G) Siloxanes and silicones, di-me, hydroxy alkyl me, me (oxabicyclo alkyl), alkoxyated |
| P-05-0721 | 08/11/05 | 11/08/05 | CBI | (G) Laminate resin | (G) Formaldehyde, polymer with amines and phenol |
| P-05-0722 | 08/11/05 | 11/08/05 | CBI | (G) Step 1 black pigment intermediate | (G) Carbon black, hydroxy-and 4-[[2-(sulfooxy)ethyl]substituted]phenyl-modified, sodium salt |
| P-05-0723 | 08/11/05 | 11/08/05 | CBI | (G) Step 1 cyan pigment intermediate | (G) Copper, [29h, 31h-phthalocyaninato(2-)-.kappa.n29, .kappa.n30, .kappa.n31, .kappa.n32]-,4-[[2-(sulfooxy)ethyl]substituted]phenyl derivs., sodium salts. |
| P-05-0724 | 08/11/05 | 11/08/05 | CBI | (G) Step 1 magenta pigment intermediate | (G) Quino[2,3-b]acridine-7,14-dione, 5,12-dihydro-2,9-dimethyl-, 4-[[2-(sulfooxy)ethyl]substituted]phenyl derivs., sodium salts. |
| P-05-0725 | 08/11/05 | 11/08/05 | CBI | (G) Step 1 yellow pigment intermediate | (G) Butanamide, 2-[(2-methoxy-4-nitrophenyl)azo]-n-(2-methoxyphenyl)-3-oxo-,4-[[2-(sulfooxy)ethyl]substituted]phenyl derivs., sodium salts. |
| P-05-0726 | 08/12/05 | 11/09/05 | CBI | (G) Coating binder | (G) Acrylic polymer |
| P-05-0727 | 08/12/05 | 11/09/05 | Wacker Chemical Corporation | (S) Crosslinker; water scavenger | (S) Carbamic acid, [(dimethoxymethylsilyl)methyl]-, methyl ester |

I. 27 PREMANUFACTURE NOTICES RECEIVED FROM: 07/25/05 TO 08/12/05—Continued

| Case No. | Received Date | Projected Notice End Date | Manufacturer/Importer | Use | Chemical |
|-----------|---------------|---------------------------|--------------------------------------|---|--|
| P-05-0728 | 08/12/05 | 11/09/05 | CIBA Specialty Chemicals Corporation | (S) Exhaust application to cotton fabrics | (G) Naphthalenesulfonic acid azo substituted phenyl amino substituted triazine amino alkyl bis salt compound |
| P-05-0729 | 08/12/05 | 11/09/05 | CBI | (G) Laminating adhesive | (G) Acetoacetate ester |

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as

CBI) on the Notices of Commencement to manufacture received:

II. 15 NOTICES OF COMMENCEMENT FROM: 07/25/05 TO 08/12/05

| Case No. | Received Date | Commencement Notice End Date | Chemical |
|-----------|---------------|------------------------------|--|
| P-04-0398 | 08/01/05 | 07/07/05 | (G) Mdi based polyurethane polymer |
| P-05-0028 | 08/01/05 | 06/27/05 | (G) Substituted pyrimidinetrione |
| P-05-0051 | 07/25/05 | 07/11/05 | (G) Polyester-polyurethane resin |
| P-05-0350 | 07/27/05 | 06/13/05 | (G) Polyester resin |
| P-05-0367 | 08/03/05 | 07/08/05 | (G) Mixed metal oxide complex |
| P-05-0427 | 07/27/05 | 07/01/05 | (G) Polyketone oligomer |
| P-05-0466 | 07/28/05 | 07/18/05 | (G) Alkyl-substituted indanone |
| P-05-0493 | 07/25/05 | 07/12/05 | (S) Hexanedioic acid, polymer with 2,2-dimethyl-1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, 2,5-furandione, hexahydro-1,3-isobenzofurandione and 1,2-propanediol, 2-ethylhexyl ester |
| P-04-0865 | 07/29/05 | 06/22/05 | (S) Aluminum oxide (a1203), manufacturing residues, red mud |
| P-04-0865 | 07/29/05 | 06/22/05 | (S) Aluminum oxide (a1203), manufacturing residues, red mud, neutralized, calcium and magnesium-contg. |
| P-05-0200 | 08/11/05 | 07/18/05 | (G) Aminophosphonic acid polyalkylene oxide salt |
| P-05-0269 | 08/10/05 | 06/30/05 | (G) Polyethanolamine diester with fatty acids dialkyl sulfate salts |
| P-05-0448 | 08/03/05 | 07/14/05 | (G) Epoxidized soya oil reaction products with aqueous alcohol |
| P-05-0456 | 08/12/05 | 08/09/05 | (G) Poly alkyl methacrylates, hydroxyalkyl methacrylate, alkyl acrylate, keto-functional alkylmethacrylate, vinyl heterocyclic monomer, reaction product with heterocyclic functional amine. |
| P-05-0506 | 08/09/05 | 08/04/05 | (G) Polyether-carbonateurethane and polyurea copolymer |

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: August 26, 2005.

Pamela M. Moseley,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 05-17718 Filed 9-6-05; 8:45 am]

BILLING CODE 6560-50-S

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7965-2]

Final Reissuance of General NPDES Permits (GP) for Alaskan Mechanical Placer Mining (Permit Number AKG-37-0000) and Alaskan Medium-Size Suction Dredging (Permit Number AKG-37-1000)

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Final Notice of reissuance of two general permits.

SUMMARY: Two GPs regulating the activities of mechanical placer mining and suction dredge mining for gold placer mining operations in the state of Alaska expire on October 3, 2005. On April 21, 2005, EPA proposed to reissue these two GPs. There was a 45 day comment period.

During the comment period, EPA received comments on the mechanical GP regarding coverage area prohibitions and metals limitations. The GP remains the same as the current GP.

EPA received similar comments as those described above for the medium-size suction dredge GP as well as concern about Endangered Species and the interpretation of a Best Management Practice (BMP). The general permit contains new language on the possibility of requiring an individual permit in areas of concern for Endangered Species and a part of a BMP has been removed. A Response to

Comments was prepared for each general permit. EPA has determined that each facility submitting a new Notice of Intent (NOI) prior to the expiration date of the current permit will be automatically covered by the re-issued GP.

DATES: The GPs will be effective October 7, 2005. Since coverage between the current GPs and the reissued GPs is continuous, there is no administrative extension of coverage under these GPs.

ADDRESSES: Copies of the GPs and Responses to Comments are available upon request. Written requests may be submitted to EPA, Region 10, 1200 Sixth Avenue OWW-130, Seattle, WA 98101. Electronic requests may be mailed to: washington.audrey@epa.gov or godsey.cindi@epa.gov.

FOR FURTHER INFORMATION CONTACT: The GPs, Fact Sheets and Response to Comments may be found on the Region 10 Web site at www.epa.gov/r10earth/

offices/water.htm under the NPDES Permits section.

Requests by telephone may be made to Audrey Washington at (206) 553-0523 or to Cindi Godsey at (907) 271-6561.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to Section 6 of that order.

The state of Alaska, Department of Environmental Conservation (ADEC), has certified that the subject discharges comply with the applicable provisions of Sections 208(e), 301, 302, 306 and 307 of the Clean Water Act.

The state of Alaska, Department of Natural Resources, Office of Project Management and Permitting, Alaska Coastal Management Program (ACMP) determined that the GPs did not require a new ACMP review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, a Federal agency must prepare an initial regulatory flexibility analysis "for any proposed rule" for which the agency "is required by section 553 of the Administrative Procedure Act (APA), or any other law, to publish general notice of proposed rulemaking." The RFA exempts from this requirement any rule that the issuing agency certifies "will not, if promulgated, have a significant economic impact on a substantial number of small entities." EPA has concluded that NPDES general permits are permits, not rulemakings, under the APA and thus not subject to APA rulemaking requirements or the RFA. Notwithstanding that general permits are not subject to the RFA, EPA has determined that these general permits, as issued, will not have a significant economic impact on a substantial number of small entities.

Dated: August 23, 2005.

Robert R. Robichaud,

Associate Director, Office of Water & Watersheds, Region 10, U.S. Environmental Protection Agency.

[FR Doc. 05-17719 Filed 9-6-05; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 1, 2005.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 7, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit your Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by e-mail send them to: *PRA@fcc.gov*. To submit your comments by U.S. mail, mark it to the attention of Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1-C804, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202-418-0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060-1008.

Title: Reallocation and Service Rules for the 698-746 MHz Band (Television Channels 52-59).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 715.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 358 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission adopted allocation and service rules for the 698-746 MHz spectrum band which is being reallocated pursuant to statutory requirements. The Commission took this action to support the development of new services in the lower 700 MHz band, and to protect existing television operations that will occupy the band throughout the transition to digital television.

Section 27.50(c)(5) provides that licensees intending to operate a base or fixed station at a power level greater than 1 kW ERP must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees that must be notified are all licensees authorized under this part to operate a base or fixed station on an adjacent spectrum block at a location within 75 km of the base or fixed station operating at a power level greater than 1 kW ERP. Notices must provide the location and operating parameters of the base or fixed station operating at a power level greater than 1 kW ERP, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notices must be provided at least 90 days prior to the commencement of station operation. The information will be used to aid the Commission in reclaiming and reallocating the lower 700 MHz band currently used for TV channels 52-59 for new commercial services as part of the Commission's transition of TV broadcasting from analog to digital transmission systems, while retaining the existing broadcast allocation. Further, the service rules have been designed to promote the development and rapid deployment of new technologies, products, and services for the benefit of the public; to promote economic opportunity and competition; and to create the efficient and intensive

use of the spectrum by promoting the objectives identified in 47 CFR 309(j).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-17797 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket 03-123; DA 05-2346]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comment on the allocation factor proposed by the National Exchange Carrier Association (NECA) for determining the number of inbound two-line captioned telephone minutes that should be compensated from the Interstate Telecommunications Relay Service (TRS) Fund.

DATES: Comments are due on or before September 22, 2005. Reply comments are due on or before October 7, 2005.

ADDRESSES: You may submit comments identified by [docket number and/or rulemaking number], by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- Mail: Parties who choose to file by paper should also submit their comment on diskette. These diskettes should be submitted, along with three paper copies to Dana Jackson, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 3-C418, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette format in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (CG Docket No. 03-123), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase: "Disk

Copy—Not an Original." Each diskette should contain only one party's pleadings, preferable in a single electronic file. In addition, commenters must send diskette copies to the Commission's contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554.

- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone (202) 418-0539 or TTY: (202) 418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT:

Dana Jackson, (202) 418-2247 (voice), (202) 418-7989 (TTY), or e-mail Dana.Jackson@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 05-2346, released August 24, 2005. Pursuant to §§ 1.415 and 1.419 of the Commission rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) The Federal Government's eRulemaking Portal, or (3) by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. All comments received are viewable by the

general public at any time through the Web site.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

The full text of document DA 05-2346, NECA's submission, and copies of any subsequently filed documents relating to this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. Document DA 05-2346, NECA's submission, and copies of subsequently filed documents in this matter may also be purchased from the Commission's contractor at Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Customers may contact the Commission's contractor at their Web site <http://www.bcpiweb.com> or call 1-800-378-3160. A copy of NECA's submission may also be found by searching ECFS at <http://www.fcc.gov/cgb/ecfs/> (insert CG Docket No. 03-123 into the proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202)

418-0530 (voice) or (202) 418-0432 (TTY). Document DA 05-2346 can also be downloaded in Word and Portable Document Format (PDF) at <http://www.fcc.gov/cgb.dro>.

Synopsis

On August 2, 2005, pursuant to the Commission's directive in the *Two-line Captioned Telephone Order*, FCC 05-141, released July 19, 2005, the Interstate TRS Fund Administrator, NECA, submitted the proposed allocation factor for inbound two-line captioned telephone calls for compensation from the Interstate TRS Fund for the period July 1, 2005 through June 30, 2006. See letter to the Federal Communications Commission Secretary, Marlene H. Dortch from the NECA Director, John Ricker, proposing the allocation factor for two-line captioned telephone calls.

In the *Two-line Captioned Telephone Order*, the Commission adopted NECA's proposed methodology for determining the number of inbound two-line captioned telephone call minutes that will be compensated from the Interstate TRS Fund. The Commission noted that for such calls there is currently no way for a provider to determine if a particular call is interstate or intrastate. The Commission instructed NECA to determine and apply, on an annual basis, an allocation factor for inbound two-line captioned telephone calls that is based on the relationship between interstate and international traditional TRS calls and all intrastate, interstate, and international traditional TRS calls.

NECA calculated the factor by using projections of traditional TRS minutes for 2005 and 2006 as submitted by relay service providers with their annual data submissions in January 2005. Interstate and international minutes for both years totaled 24,459,907; local, intrastate, interstate and international minutes totaled 213,957,866. Dividing interstate and international minutes by total minutes results in a proposed interstate factor of 11% for inbound two-line captioned telephone minutes. The remaining 89% of minutes would continue to be allocated to the intrastate jurisdiction.

Federal Communications Commission.

Jay Keithley,

Deputy Bureau Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 05-17523 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[MB Docket 05-255; FCC 05-155]

Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission is required to report annually to Congress on the status of competition in markets for the delivery of video programming. This document solicits information from the public for use in preparing this year's competition report that is to be submitted to Congress in December 2005. Comments and data submitted by parties will be used in conjunction with publicly available information and filings submitted in relevant Commission proceedings to assess the extent of competition in the market for the delivery of video programming.

DATES: Comments are due on or before September 19, 2005, and reply comments are due on or before October 3, 2005.

ADDRESSES: You may submit comments, identified by MB Docket No. 05-255, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or telephone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION, CONTACT:

Timothy May, Media Bureau, (202) 418-1463, TTY (202) 418-7172 or by e-mail at Timothy.May@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Inquiry (NOI) in MB Docket No. 05-255, FCC 05-155, adopted August 9, 2005, and released August 12, 2005. The complete text of this NOI is available for inspection and copying Monday during regular business hours in the FCC's Reference Information Center, Room CY-A257, Portals II, 445 Twelfth Street, SW., Washington, DC 20554. The

complete text is also available on the Commission's Internet Site at <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418-7426 or TTY (202) 418-7365. The complete text of the NOI may also be purchased from the Commission's duplicating contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893, facsimile (202) 863-2898, or by e-mail fcc@bcpiweb.com, or via its Web site <http://www.bcpiweb.com>.

Synopsis of Notice of Inquiry

1. Section 628(g) of the Communications Act of 1934, as amended, directs the Commission to report to Congress annually on the status of competition in the market for the delivery of video programming. This Notice of Inquiry (NOI) solicits data and information on the status of competition in the market for the delivery of video programming for the Commission's twelfth annual report (*2005 Report*). We request information, comments, and analyses that will allow us to evaluate the status of competition in the video marketplace, changes in the market since the *2004 Report*, prospects for new entrants to that market, factors that have facilitated or impeded competition, and the effect these factors are having on consumers' access to video programming. Where possible and relevant, we request data as of June 30, 2005.

2. We encourage thorough and substantive submissions from industry participants and state and local regulators with the best knowledge of the questions and issues raised. We will augment reported information with submissions in other Commission proceedings. In the past, we have had to rely on data from publicly available sources when information has not been provided directly by industry participants. The Commission intends to seek out publicly available information relevant to this inquiry.

Competition in the Market for the Delivery of Video Programming

3. In the NOI, we ask commenters to provide data on video programming distributors, including cable systems, direct broadcast satellite (DBS) services, large home satellite or C-Band dish (C-Band) providers, broadband service providers (BSPs), private cable or satellite master antenna television (PCO) systems, open video systems (OVS), multichannel multipoint distribution or wireless cable systems (wireless cable), local exchange carrier (LEC) systems,

utility-operated systems, and over-the-air broadcast television stations. We seek information on video programming distributed on videocassettes and DVDs through retail distribution outlets, over the Internet and via Internet Protocol (IP) networks.

4. We seek information and statistical data for each type of multichannel video programming distributor (MVPD), including the number of homes passed by each wired technology; the number of homes capable of receiving service via each wireless technology; the number of subscribers and penetration rates for each service (e.g., basic cable service, cable programming service tier or CPST, premium, or their equivalents provided by non-cable MVPDs, pay-per-view, video-on-demand (VOD)); channel capacities and the number, type, and identity of video programming channels offered, the channel capacity required for such offerings, and the available channel capacity of the system; prices charged for various programming packages; cost of programming inputs; industry and individual firm financial information, such as total revenue and revenue by individual company segments or services, cash flow, and expenditures; information on how video programming distributors compare in terms of relative size and financial resources; data that measure the audience reach of video programming distribution firms as well as relative control over the video distribution market; information on video distributor expansion into new markets such as local telephony and high-speed-Internet access, the percentage of subscribers taking these services, and the competitive advantages of offering these services; and information on new technologies being considered, tested, or deployed by MVPDs for video, voice and data.

5. We are interested in data and information on the number of homes capable of choosing among MVPD services. How many households can receive service from one or more providers (e.g., DBS, wireless cable, PCO) as well as an incumbent cable provider? We seek comments and data on the number of consumers with access to wireline overbuilders, such as the number of homes passed by more than one wireline MVPD, and why the availability is low relative to wireless alternatives. As part of this request, we want to identify markets where wireline competition exists today, where entry is likely in the near future, and where wireline competition once existed but failed.

6. We seek comments and information on the consequences for consumers of

competition in the market for video programming. Has competition among MVPD services resulted in lower prices, more programming choices, better quality of service, more advanced services (both video and non-video) or other consumer benefits? Is there evidence of price competition?

7. We also ask whether the effect of competition varies depending upon the nature of the competitors. In particular, we seek data on relative prices in order to evaluate substitution between MVPD technologies (i.e., what are the prices of similar cable, DBS, LEC, OVS and BSP services). Also, how should we compare bundled service packages, such as video, voice, and high-speed data, among MVPDs? Are there barriers to entry in the market for the delivery of video programming, including regulations or statutory provisions that prevent new entrants from promptly deploying their networks and offering consumers new video service options?

8. We seek information on existing, planned, and terminated or merged programming services to assess the changes over the past year in the amount and type of video programming that is available to consumers. We request detailed information about programming networks including ownership, the type of programming services (e.g., national, regional, local) and the genre of programming services (e.g., sports, news, children's, general entertainment, and foreign language). We also seek information on the nature of trends in the status of programming networks' vertical integration with cable operators and with other media interests. We seek comment on programmers' access to MVPDs and their ability to gain carriage. We request comment on the effectiveness of our program access, program carriage, and channel occupancy rules.

9. We request information on children's, locally-originated, and local news and community affairs programming is distributed to consumers. To what extent is programming offered in languages other than English, nationally and locally? We seek comment on cable operators' public, educational, and governmental access and leased access channel. We ask for information on the programming provided by DBS operators in compliance with their public interest obligation. We also seek information on how video programming distributors package and market their programming. To what extent do MVPDs offer or plan to offer themed tiers, such as sports tiers or family tiers.

10. With respect to access to programming by persons with

disabilities, we invite commenters to provide information regarding the accessibility of closed captioning and video description. We seek information on the quality, accuracy, placement, technology, and any instances of missing or delayed captions, and the amount of digital programming that contains closed captions translated from analog closed captions. We further seek information on the availability of video description, currently provided by programmers on a voluntary basis.

11. We seek comment on the availability and compatibility of customer premises equipment used to provide video programming and other services. We request information on the number of households that currently have analog television sets and the number of those television sets that are connected to an external set-top box that allows for the provision of various MVPD services. We request information on the number of households that have digital television sets and the number of those sets that are connected to set-top boxes for each type of service provided by such boxes.

12. We seek information on the retail availability of navigation devices to consumers, including the number of such devices that have been sold and the obstacles to equipment manufacturers and others for obtaining approval to attach devices to MVPD systems. We request information on the development and deployment of electronic programming guides (EPGs), including the number and type of EPGs that video programming distributors offer or plan to offer to their subscribers, and the technologies used to distribute EPGs.

13. We continue to monitor competition issues specific to video programming distribution in rural and smaller markets. How does competition differ between rural and smaller markets and larger and urban areas? We are particularly interested in information on the experiences of independent cable system operators (i.e., cable systems not affiliated with the largest MSOs) and the degree of upgrades of cable systems in rural and smaller markets. We request information on the programming offered in rural and smaller markets and any differences between these offerings and those available in larger markets. Similarly, we seek comment on any factors that are unique to competition in multiple dwelling units (MDUs).

Cable Television Service

14. For the 2005 Report, we seek updated information on the performance of the cable television industry. We request information

regarding the investments that cable operators have made to upgrade their plant and equipment to increase channel capacity, create digital services, or offer advanced services. We request information on the deployment of various types and technical methods to increase capacity.

15. For individual cable multiple system operators (MSOs), we request information on the number of systems upgraded, the channel capacity (as measured in terms of analog channel capacity) resulting from upgrades, the digital channel capacity resulting from upgrades (including the digital to analog compression ratio used), the number of systems with digital tiers, the number of households where digital cable services are available, and the number of subscribers to these digital services. To what extent is the new capacity used for video services as opposed to non-video services? We seek information on cable operators who have launched or plan to launch digital simulcasts of their analog channel lineups on one or more of their systems. How would the structure and price of service tiers change if a system becomes all-digital?

16. We seek information on mergers and other cable system transactions during the past year, including the names of the buyer and seller, the date of the transaction, type of transaction (*i.e.*, sale, swap, or trade), name and location of the system, homes passed and number of subscribers, and the price. We continue to monitor the practice of clustering, whereby operators concentrate their operations in specific geographic areas and request data regarding the effect of clustering on competition in the video programming distribution market. What effect does clustering have on economies of scale and scope vis-a-vis competition with overbuilders?

17. We seek comment on whether cable operators are changing the way they package programming. Are cable operators restructuring their tiers by shifting programming from the basic service tier (BST) to cable programming service tier (CPST) or from these tiers to digital or premium tiers? To what extent do cable operators offer multiple CPSTs or digital tiers? To what extent do they offer themed tiers, such as a family tier? Where cable operators provide digital tiers, are they creating additional digital programming genre packages (*e.g.*, family, sports, and lifestyle theme tiers) that require an additional subscription fee?

18. Commenters are asked to provide information regarding the advanced service offerings by cable operators, such as video-on-demand, digital video

recorders (DVRs), cable modem service, telephony, including Voice Over Internet Protocol (VoIP), and Open Cable Applications Platform (OCAP) applications. We seek information on cable operators that currently provide or plan to provide video-on-demand these services.

19. We also request information regarding the development of specifications for interoperable set-top boxes, *i.e.*, set-top boxes that can be moved from one cable franchise area to another and function with any given cable providers local system in CableLab's OpenCable Process? What percentage of equipment is compatible with the OpenCable standards? We also seek information on the availability of CableCARDS, the removable security module which, when inserted in an OpenCable certified device enables the delivery of digital video programming and other services. We further ask for information on how many products are available with built-in "plug and play" functionality for one way digital cable service.

20. Section 612(g) of the Communications Act provides that at such time as cable systems with 36 or more activated channels are available to 70 percent of households within the United States and are subscribed to by 70 percent of those households, the Commission may promulgate any additional rules necessary to promote diversity of information sources. We request comment and supporting data that would be useful for determining an accurate homes passed statistic, including the number of homes passed by systems with 36 or more activated channels. We further seek information regarding how many homes passed by systems with 36 or more channels actually subscribe to cable service.

Direct-to-Home Satellite Services

21. We seek information and data that explain the factors contributing to DBS' growth in the video programming market and that can help us assess whether those characteristics will continue to position DBS as cable's principal competitor. We seek information on the geographic characteristics of direct to home (DTH) subscribers. Are they more likely to reside in urban areas than rural areas, or vice versa? To what extent do DBS subscribers reside in areas not passed by cable systems? Although DBS is a national service, we continue to monitor technical limitations, such as line of sight, which impede the availability of DBS. How many or what percentage of households cannot receive DBS service because they are not within the line of

sight of the satellite signal? We request any consumer surveys identifying differences between consumers who choose to subscribe to DBS or C-Band, rather than choose cable or another video programming distributor. What percentage of new DBS subscribers are former cable subscribers?

22. We request information regarding the investments that DBS operators have made or plan to make to augment their satellite fleets and equipment to increase channel capacity or offer advanced services. We request information on current channel capacity and the deployment of various technical methods to increase capacity. We request data on prices for DBS programming packages and equipment. What is the typical cost of DBS equipment and installation?

23. We request updated information on the number of markets where local-into-local television service is offered, or will be offered in the near future, pursuant to the Satellite Home Viewer Improvement Act of 1999 (SHVIA), including the number and affiliation of the stations carried. What is the cost to consumers of local-into-local broadcast channels? What percentage of DBS subscribers subscribe to cable in order to receive local broadcast signals? On December 8, 2004, the Satellite Home Viewer Extension and Reauthorization Act of 2004 (SHVERA) was enacted, which added new provisions to the Communications and Copyright Acts pertaining to the retransmission by DBS of distant broadcast signals. We request comment on the potential impact of SHVERA on DBS' ability to compete in the MVPD marketplace.

24. With respect to large home satellite dish or C-Band service providers, our 2004 Report found a continued decline in subscriber activations, caused principally by C-Band subscribers switching to DBS because of the smaller, less expensive, and easier to use equipment. We seek information about programming and program packages that remain available for C-Band subscribers.

25. With respect to satellite delivered advanced services, we seek information on the status of current and future plans regarding both satellite-delivered high-speed Internet access with a telephone return path as well as two-way satellite delivered high-speed Internet access services offered by the satellite industry, including fixed satellite systems (FSS), DTH and DBS providers. We request information on set-top boxes with DVR capabilities, including number of subscribers purchasing or leasing this equipment. We also seek information on

the rollout of HD programming to DBS subscribers.

26. In 2002, the Commission established the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band), which is allocated to DBS on a primary basis. MVDDS spectrum may be used to facilitate the delivery of new video and broadband communications services, such as local television programming and high-speed Internet access. We invite comment on the status of MVDDS equipment and deployment.

Local Exchange Carriers

27. We have previously reported that incumbent LEC entry into the MVPD industry remains limited, but that recent developments indicated renewed incumbent LEC interest in providing video programming services. What is the current extent of deployment of these broadband networks? What are LECs' future deployment plans?

28. We seek information generally regarding incumbent LECs that provide video programming services. Are there any regulatory or statutory impediments to LEC entry in the video service market? To what extent are LECs operating cable systems? To what extent are LECs overbuilding incumbent cable systems' service areas? Do LECs that operate cable systems face special hurdles to providing video service? Are the services offered by fiber to the premises (FTTP) and fiber to the node (FTTN) comparable to those available via cable or satellite? We request comment on the status of planned incumbent LEC IP video and Internet Protocol television (IPTV) deployments.

Broadband Service Providers and Open Video System Operators

29. We request information regarding the provision of video, voice, and data services by Broadband Service Providers (BSPs), including municipal, independent and competitive local exchange carriers (CLEC) overbuilders, and open video system (OVS) operators. Are video programming services offered in combination with telephone and high-speed Internet access services and, if so, how are rates affected by the packaging of multiple services? How many, or what percentage of, BSP and OVS subscribers purchase video service alone, video and telephony, video and high-speed Internet access services, or all three services? We further seek comment on the current and potential effect of BSPs and OVS providers on the status of video competition. We seek comment on the characteristics that facilitate BSP competitiveness (e.g., number of subscribers, homes passed,

geographical reach, demographics, and business models).

Electric and Gas Utilities

30. We seek information regarding utility companies that provide video services, including the extent to which video programming services are being bundled with telephone, high-speed Internet access, or other utility services? How does the ability to offer bundled services affect the relative competitive position of these utilities? In addition, several utility companies have been experimenting with "broadband-over-powerline" (BPL) technology, which uses power lines to carry high-speed data signals the "last mile" to the home. We seek comment on the extent to which BPL technology can or is being used to provide video programming services, either separately or together with voice and data services.

Internet Video

31. We seek updated information as to the quality of readily available streaming and downloadable video. We are particularly interested in what criteria should be used to compare picture quality of Internet-based video to video programming distributed by traditional broadcasters and MVPDs. We continue to seek information on the types of video services currently being offered over the Internet both in real-time and downloadable format. We also seek projections of whether and, if so, when Internet video will become a viable competitor in the market for the delivery of video programming.

32. With respect to IPTV, when used for video programming delivery by cable and other MVPDs, should IPTV be considered a separate service, or simply a different means of video programming transmission? We invite comment on whether and to what extent MVPDs are delivering IPTV over their broadband Internet connections, and information on the types of IPTV services that are planned or being deployed. We seek projections of whether and when IPTV will have a competitive impact on the market for the delivery of video programming. We also seek comment on what Digital Rights Management (DRM) and other security technologies IPTV providers use, and the effect of the choice of DRM on competition. In addition, we request comment on any other competitive or regulatory issues raised by the provision of IPTV over broadband Internet connections.

Broadcast Television Service

33. We seek data and comment on the role of broadcast television in the market for the delivery of video

programming. We seek data on broadcast network and station audience shares, especially relative to those of non-broadcast programming services. We also request data on broadcast advertising revenue. To what extent has cable gained local, regional, or national advertising market share from broadcast television? To what extent are cable television and DBS retransmission consent negotiations providing broadcasters with an additional revenue source, either through direct compensation or through indirect benefits such as, for example, contracts for the carriage of affiliated programming? If the compensation is not direct, how is it accounted for? What forms of compensation are broadcasters receiving for retransmission consent?

34. We invite comment and seek data on a broad range of issues relating to the digital television (DTV) transition. We are most interested in the ways in which broadcast television stations' deployment of digital television service, and the DTV programming provided by MVPDs, impact competition in the video programming distribution market. Is the growth of DTV broadcasting making broadcast television a substitute for, or competitor of, MVPDs? We invite comment on current and projected levels of consumer access to and use of DTV, including over-the-air availability of DTV service and carriage of DTV programming by MVPDs, including satellite systems as well as cable systems. We also invite comment on programming content that is available in DTV formats, equipment that is used to receive DTV programming, and consumer education efforts.

35. We request information on how consumers receive television programming, and how many of these households have the capability to receive DTV programming. We request data on the number or percentage of households relying solely on over-the-air broadcast television for programming, as well as the number of MVPD households that rely on over-the-air reception for local broadcast service on one or more of their television sets not connected to an MVPD, by type of MVPD service. We specifically request information on the number of households that are able to receive DTV and/or high definition television (HDTV) programming either over the air or from an MVPD. We also seek comments on how these subscriber numbers are expected to grow over the next several years.

36. We seek information on the availability of over-the-air DTV service to viewers. What portion of the

population has access to over-the-air DTV service? We request information regarding the carriage of DTV programming by MVPDs and plans to increase the amount of DTV programming carried. We request information regarding the amount and type of DTV programming (e.g., network, local, syndicated) currently offered by broadcasters. Last year, we reported on the efforts of several companies using broadcast spectrum for subscription video distribution via DTV streams. We seek updated information on the status of these efforts and other planned uses of DTV spectrum. We seek information regarding the equipment needed to receive DTV programming either over the air or from an MVPD.

Wireless Cable Systems

37. We recognize that wireless cable operators offer limited competition to incumbent cable operators. Many licensees of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) used by wireless cable operators to provide video service have chosen to focus on the delivery of non-video broadband services, such as high speed Internet service. We seek information on the factors that have led wireless cable operators to move away from offering video services over their platforms, including any concerning access to programming, bandwidth considerations, local regulatory considerations, and bundled service offerings.

Private Cable Operators

38. We request information on the types of services offered by private cable operators (PCOs), also known as satellite master antenna television (SMATV) operators. We seek information on the number of PCOs in the United States, the geographic areas they serve, the identification and size of PCO companies, the programming packages offered, and the prices of such packages compared to those of incumbent cable operators. In 2002, the Commission made PCOs eligible for CARS licenses, an action intended to enhance opportunities for PCOs to provide additional competition to incumbent cable operators. We seek comments as to whether CARS licenses are being used by PCOs as envisioned and whether the anticipated benefits are being achieved.

Home Video Sales and Rentals

39. We seek information regarding the home video sales and rental market, including data on the number or percentage of households with videocassette recorders and DVD

players. We request information on the amount of programming available in DVD and VHS formats, for sale and rental, the cost of rentals, and how this compares with the cost of pay-per-view, video-on-demand, or near video-on-demand programming offered by MVPDs. We also seek information on Internet-based video sales and rental services and the effect, if any, they have on video distributors' service offerings, such as VOD and pay-per-view.

Commercial Mobile Radio Service Providers

40. We request information on the availability and deployment of mobile television services. How many mobile telephone users have access to and subscribe to video programming services? Are specialized telephones or other devices required to receive these services? How much do such services cost? In which markets are these services available? Are any other providers planning to launch similar services and is additional network capacity required to provide them? To what extent should mobile telephone providers that offer video programming be considered MVPDs? Although these services are just emerging, we seek comment on what impact, if any, they have on competition in the MVPD market.

Foreign Markets

41. We invite comment on the status of competition in foreign markets for the delivery of video programming to provide insight into the nature of competition in the United States and relative efficiency of market structures and regulations within the United States. We seek current information and case studies on video delivery in foreign markets. Specifically, we seek information regarding the differences between the United States and other markets in the distribution of video programming, including developments in video over IP, the digital television transition, and broadcast, cable and satellite competition. What regulatory models are associated with increased levels of competition in foreign markets?

Procedural Matters

42. *Authority.* This *NOI* is issued pursuant to authority contained in Sections 4(i), 4(j), 403, and 628(g) of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j), 403, and 548(g).

43. *Ex Parte Rules.* There are no *ex parte* or disclosure requirements applicable to this proceeding pursuant to 47 CFR 1.1204(b)(1).

44. *Comment Information.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before September 19, 2005, and reply comments on or before October 3, 2005. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the Web site for submitting comments.

- **For ECFS filers,** if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

- **Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- **The Commission's contractor** will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05-17705 Filed 9-6-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-212]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April through June 2005. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL) and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: William Cibulas, Jr., Ph.D., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, N.E., Mailstop E-32, Atlanta, GA 30333, telephone (404) 498-0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on June 29, 2005 [70 FR 37409]. This announcement is the responsibility of ATSDR under the regulation "Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities" [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section

104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)].

Availability

The completed public health assessments are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1825 Century Center Boulevard, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (800) 553-6847. NTIS charges for copies of public health assessments. The NTIS order numbers are listed in parentheses following the site name.

Public Health Assessments Completed or Issued

Between April 1, 2005, and June 30, 2005, public health assessments were issued for the sites listed below:

NPL and Proposed NPL Sites

Colorado

Rocky Flats Environmental Technology Site—(PB2005-106307)

Maine

Naval Air Station Brunswick—(PB2005-106879)

Nebraska

Omaha Lead—(PB2005-106280)

New Jersey

Standard Chlorine Chemical Company, Incorporated—(PB2005-106282)

Ohio

Armco Incorporated—Hamilton Plant—(PB2005-107525)

Pennsylvania

Franklin Slag Pile (MDC) Site—(PB2005-106326)

Texas

Jones Road Groundwater Plume—(PB2005-106305)

Utah

Davenport and Flagstaff Smelters (PB2005-106277)

Eureka Mills—(PB2005-106279)

Non-NPL Petitioned Sites

Louisiana

Pab Oil and Chemical Services, Incorporated—(PB2005-106281)

Mississippi

Naval Construction Battalion Center Gulfport—(PB2005-106306)

New York

Village Liberty Water Supply System—Elm Street Well—(PB2005-106308)

Dated: August 30, 2005.

Kenneth Rose,

Acting Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 05-17664 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-70-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Increasing Access to HIV Confidential Voluntary Counseling and Testing (VCT) and Enhancing HIV/AIDS Communications, Prevention, and Care in the Republics of Lesotho, South Africa, and Swaziland

Announcement Type: New.
Funding Opportunity Number: CDC-RFA-AA239.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:
Application Deadline: September 29, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 242], as amended, and under Public Law 108-25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background

President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is

available at the following Internet address: <http://www.state.gov/s/gac/rl/or/c11652.htm>.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to South Africa are to treat at least 500,000 HIV-infected individuals and care for 2,500,000 HIV-affected individuals, including orphans.

Purpose

The United States Government seeks to reduce the impact of HIV/AIDS in specific countries in sub-Saharan Africa, Asia and the Americas by working with governments and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan. Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemics in Lesotho, South Africa and Swaziland through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions.

Specifically, the successful awardees of this announcement will expand and enhance the use of high quality confidential HIV VCT services (including social marketing for promoting awareness and importance of testing) in Lesotho, South Africa and Swaziland, including rural areas. These services include referral of those testing positive to sources of ongoing psychosocial support and basic preventive and palliative care. Use of counseling and testing (CT) services is intended to lead to safer sexual behaviors, including abstinence, fidelity, and, for populations engaged in high-risk behaviors,¹ correct and consistent condom use, and increased use of care and support

¹ Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

through a strong referral network to complementary care. A secondary purpose of this program is to enhance culturally and age-appropriate HIV/AIDS prevention communications activities. Awardees may not implement condom social marketing campaigns without also implementing abstinence and faithfulness behavior-change interventions. The provision of anti-retroviral therapy (ART) is not part of this program, although patients who qualify for ART under medical criteria may receive referrals to treatment sites as they become available.

Monitoring and evaluation of all programs and services will be essential in measuring success of these activities. All of the program activities conducted in this cooperative agreement are part of the Emergency Plan.

Measurable outcomes of the program will be in alignment with the performance goals of the President's Emergency Plan and with the following performance goal for the CDC National Center for HIV, STD and TB Prevention within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young people 15 to 24 years of age. Specific measurable outcomes of this program include, but are not be limited to, the number, age and sex of clients (individual and couples) provided with confidential HIV CT, unrecognized HIV infections discovered, the cost per client service and per unrecognized infection, and the number of persons with HIV successfully referred to an effective care or treatment provider.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

Activities

Based on its competitive advantage and proven field experience, the successful applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this Program Announcement. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

The grantee will either implement activities directly or through its subgrantees and/or subcontractors; the grantee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the Global AIDS Coordinator. The grantee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this five-year plan, which the U.S. Government Emergency Plan teams on the ground in South Africa, Swaziland and Lesotho will review, respectively, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Establishing and running programs to make confidential HIV CT a routine part of medical care, linked together within countries as a network sharing standardized CT protocols and procedures, standardized management systems, standardized monitoring and evaluation procedures and instruments, and standardized marketing and education materials and activities.
2. Operating mobile HIV confidential CT activities to reach rural populations and/or employees at their workplaces.
3. Developing and implementing comprehensive, culturally appropriate social marketing campaigns in local languages to create informed demand for confidential HIV CT services and reduce stigma surrounding seeking CT.
4. Developing and implementing comprehensive, culturally and age-

appropriate social marketing campaigns to promote abstinence and faithfulness that reflect and respect local cultural and religious mores.

5. Developing and implementing programs in local languages to promote healthy behavior change among populations engaged in high-risk behaviors and at high-risk sites (*e.g.*, bars, bottle shops).

6. Promoting culturally appropriate messages in local languages that raise awareness about the harmful ties between alcohol/substance abuse and HIV infection and poor adherence to antiretrovirals (ARVs).

7. Creating referral networks for confidential HIV CT clients to improve access to care and support.

8. Collecting strategic information to ensure the effectiveness of HIV/AIDS prevention activities.

9. Providing support, as appropriate, to the national Departments of Health (DOH), Ministries of Health (MOH) and other agencies of the national government, which could include, without limitation: improvement of monitoring and evaluation activities to assure high-quality service delivery in all confidential HIV CT sites; development of culturally and age-appropriate communications materials in local languages; development and/or implementation of training curricula; and improvement of laboratory infrastructure.

10. Training faith-based leaders to encourage testing and partnering with CT providers to enable testing at places of worship.

11. Ensuring that all of the above activities are undertaken in a manner consistent with and in support of the five-year U.S. Government HIV/AIDS strategy for the Emergency Plan and the National Ministry of Health strategies. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of community-based, non-governmental and faith-based organizations.

12. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

13. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

14. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on National Ministry of Health and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

Administration

Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring. HHS Activities for this program are as follows:

1. Support training of VCT counselors, development of tools for monitoring and evaluation of confidential counseling and testing programs, quality assurance, and competitive and transparent procurement of HIV rapid tests.

2. Expand age-appropriate supportive counseling, psychosocial support, and preventive counseling for children, adolescents and people with special needs. Interventions should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those whose behavior places them at risk for transmitting or becoming infected with HIV.²

3. Facilitate the exchange of materials and expertise with regard to confidential counseling and testing services for populations engaged in high-risk behaviors.

4. Strengthen confidential counseling and testing programs.

5. Organize an orientation meeting with the grantee to brief them on

² Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

6. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

7. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

8. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

9. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

10. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following performance goals for the President's Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, *and, for populations engaged in high-risk behaviors*³, correct and consistent condom use.

³ Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual

1. Abstinence (A) and Be Faithful (B).
 • Number of community outreach and/or mass media (radio) programs that are A/B focused.

• Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing.

• Number of patients who accept confidential counseling and testing in a health-care setting.

• Number of clients served, direct.
 • Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphan and Vulnerable Children (OVC).

Number of service outlets/programs, direct and/or indirect.

• Number of clients (OVC) served, direct and/or indirect.
 • Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support.

• Number of service outlets/programs that provide palliative care, direct and/or indirect.

• Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.

• Number of clients served with palliative care, direct and/or indirect.

• Number of persons trained in providing palliative care, direct.

C. HIV Treatment With ART

• Number of clients enrolled in ART, direct and indirect.

• Number of persons trained in providing ART, direct.

D. Strategic Information

• Number of persons trained in strategic information, direct.

E. Expanded Indigenous Sustainable Response

• Project-specific quantifiable milestones to measure:

- Indigenous capacity-building.
- Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement.

CDC involvement in this program is listed in the Activities Section above.

interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: \$2–6.0 million per year, over five years; or \$30 million. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: \$1–2 million for South Africa and \$1–2 million for Swaziland and Lesotho. (This amount is for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: \$1 million.

Ceiling of Award Range: \$6.5 million. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: October 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports and input from recipient government agencies), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- For profit organizations.
- Small, minority-owned, or women-owned businesses.
- Community-based organizations.
- Research institutions.
- Hospitals.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their

Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

• Political subdivisions of States (in consultation with States).

Applicants must meet the criteria listed below:

• Have at least three years of documented HIV/AIDS related program implementation experience in any of the following countries: Lesotho, South Africa, and Swaziland.

• Have demonstrated expertise in the areas of direct HIV CT service delivery, AIDS prevention communications, and social marketing in any of the following countries: Lesotho, South Africa, and Swaziland.

• Be locally incorporated in any of the following countries: Lesotho, South Africa, and Swaziland.

• U.S. Embassy collaboration in Swaziland and Lesotho will also be necessary.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements:

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

• HHS/CDC will consider late applications to be non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at <http://www.grants.gov>.

Application forms and instructions are available on the HHS/CDC Web site,

at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. We can e-mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25—If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point un-reduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Pages should be numbered.
- Printed only on one side of page.
- Appendices may be included.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to conduct over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need).
- Project Strategy—Description and Methodologies.
- Project Goals.
- Project Outputs.
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.
- Work Plan and Description of Project Components and Activities.
- Performance Measures.
- Timeline (e.g., GANTT Chart).
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Project Budget and Justification.
- Project Budget Notes.
- Job Descriptions.
- Testing Protocols.
- Overview of HIV Counseling and Testing Quality Assurance Procedures, both Internal and External.
- HIV Counseling and Testing Quality Assurance, Monitoring and Evaluation and Strategic Information Forms.
- HIV Counseling and Testing Referral Procedures and Forms.
- Mobile HIV Counseling and Testing Processes and Procedures.

- HIV Counseling and Testing Staff Training Curricula.
- Applicant's Corporate Capability Statement.
- Letter of Support.

The budget justification will not count in the narrative page limit.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the HHS/CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcommnt.htm>.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: September 29, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at <http://www.grants.gov>. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to <http://www.grants.gov>. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive

an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because of: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic

organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations, regardless of their location.

- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required) relating to the management of sub-grants to local organizations and improving their capacity.

- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S. based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by HHS/CDC.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to

endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'") addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You can find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

Application Submission Address:

HHS/CDC strongly encourages you to submit electronically at: <http://www.grants.gov>. You will be able to download a copy of the application package from <http://www.grants.gov>, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach customer support by e-mail at support@grants.gov, or by phone at 1-800-518-4726 (1-800-518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for

creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management—AA239, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness must be submitted with the application and they will be an element of evaluation.

We will evaluate your application will be evaluated against the following criteria:

1. Ability to Carry Out the Proposal (25 points).

Does the applicant demonstrate the local experience and capability to achieve the goals of the project? Do the staff members have appropriate experience? Are the staff roles clearly defined? Does the applicant currently have the capacity to reach rural populations in Lesotho, South Africa and Swaziland despite the complex political situation?

2.2. Understanding the issues, principles and systems requirements involved in carrying out the project and fitting into the five-year strategy and goals of the President's Emergency Plan (25 points):

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Lesotho, South Africa and Swaziland and meet the goals of the Emergency Plan?

3. Work Plan (20 points):

Does the applicant describe strategies that are pertinent and match those identified in

the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Lesotho, South Africa and Swaziland to achieve the goals of the Emergency Plan?

4. Capacity-Building (15 points):

Does the applicant describe a plan to progressively build the indigenous capacity of local organizations and of target beneficiaries and communities to respond to the epidemic, such that, if the applicant is not an national organization, at the end of the project period the applicant can turn over management of the project to a local partner or partners?

5. Administrative and Accounting Plan (15 points):

Is there a plan to prepare reports, monitor and evaluate activities, audit expenditures and manage the resources of the program?

6. Budget (not scored):

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Lesotho, South Africa and Swaziland?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

October 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions.
- AR-5 HIV Program Review Panel Requirements.
- AR-7 Executive Order 12372.
- AR-8 Public Health System Reporting Requirements.
- AR-14 Accounting System Requirements.
- AR-15 Proof of Non-Profit Status.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

You need to include an additional Certifications form from the PHS 5161-1 application in your Grants.gov electronic submission only. Please refer to <http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf>. Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English).

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

- a. Current Budget Period Activities Objectives.
- b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for South Africa.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for South Africa.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist and Program Technical Assistance Project Officer listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700.

For program technical assistance, contact: Melanie Duckworth, Project Officer, HHS/CDC Global AIDS Program, 9300 Pretoria Place, Washington, DC 20521-9300, Telephone: 27 12 346 0170, E-mail: duckworthm@sa.cdc.gov.

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-1515, E-mail: zbx6@cdc.gov.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: <http://www.cdc.gov> (Click on "Funding" then "Grants and Cooperative Agreements"), and on the Web site of the HHS Office of Global Health Affairs, Internet address: <http://www.globalhealth.gov>.

Dated: August 31, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention,
U.S. Department of Health and Human
Services.*

[FR Doc. 05-17666 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening and Expanding HIV/AIDS Treatment, Care and Support for Prostitutes and Their Associated Sexual Partners in the Republic of Haiti as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: CDC-RFA-AA158.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 29, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. sections 241 and 2421] as amended, and under Public Law 108-25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 2 in the Caribbean. The five-year strategy for the Emergency Plan is available at the following Internet address: <http://www.state.gov/s/gac/rl/or/c11652.htm>.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Haiti are to treat at least 25,000 HIV-infected individuals; care for 125,000 HIV-affected individuals, including orphans.

Purpose: An essential element of preventing new cases of HIV in Haiti is to ensure that groups engaged in high-

risk behavior¹ have adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is reported to be 5.6 percent, according to the 2004 Annual Report of the Joint United Nations Programme on HIV/AIDS (UNAIDS). Access to prevention and treatment is limited among the Haitian population because of an underdeveloped public health infrastructure and a lack of clinical capacity.

This cooperative agreement seeks to fund HIV/AIDS education, prevention, and treatment activities targeted at prostitutes and their associated sexual partners in Haiti, including by discouraging men from visiting prostitutes. Extremely high-risk groups are a priority for the national prevention effort in Haiti.

Prostitutes and their associated sexual partners have received little to no attention in the Haitian national prevention effort to stop the spread of HIV/AIDS. Prostitutes in Haiti engage in an illegal profession, and are thus very secretive and loosely organized through informal and often clandestine networks, and establishing a relationship with them to provide education, prevention, care and treatment is very difficult. This high-risk population needs to be much more engaged in the national prevention effort against the spread of HIV/AIDS in Haiti.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce

¹ Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

transmission via blood transfusion and medical injections.

- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).

- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan for AIDS Relief and with one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services; strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions; and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of "research," please see the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Haiti. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the

policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Haiti will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee Activities for this program are as follows:

1. Establish anonymous clinics in Haiti for populations engaged in high-risk behavior² to address prevention, treatment and care to decrease the transmission of HIV/AIDS.

2. Develop targeted local-language campaigns in Haiti to promote prevention, care and treatment for prostitutes and their sexual partners, including to discourage men from visiting prostitutes. Awardees may not implement condom social marketing aimed at prostitutes without promoting abstinence and faithfulness messages to current and potential clients of prostitutes.

3. Develop referral networks with local Haitian organizations (including faith-based groups) that provide advanced care and treatment and support for HIV-positive persons.

4. Develop and implement an effective monitoring and evaluation strategy according to the strategic-information guidelines established by the Office of the Global AIDS Coordinator, and report the required indicators to the Office of the U.S.

² Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

Global AIDS Coordinator in a timely manner.

5. Ensure that program objectives and work plan take into account and are consistent with regional U.S. Government efforts to monitor and combat trafficking in persons. Awardee must be prepared to work with other organizations funded by the U.S. Government to conduct anti-trafficking programs in the Caribbean region, especially in the border area between Haiti and the Dominican Republic.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in this announcement.

Administration: The winning applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief it on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures

in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

10. Provide equipment and commodities for new partner clinics acquired through a transparent and competitive process.

11. Provide funds to renovate three existing clinics that provide care to prostitutes and their associated sexual partners.

12. Provide drugs to treat sexually transmitted infections (STI) and opportunistic infections (OI), acquired through a transparent and competitive process.

13. Support an electronic medical record (EMR) database system; provide and support a surveillance database system for case notification.

14. Provide and install hardware necessary for the use of database systems, and provision of technical assistance on database use and maintenance needs.

15. Support operational research, and technical assistance for operational research.

16. Support the annual technical review of service delivery programs of new clinics.

17. Assist in organizing partner network meetings. (Such support will not include financing.)

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Measurable outcomes of the program will be in alignment with the following

performance goals for the Emergency Plan:

A. Prevention

Number of individuals trained to provide HIV prevention interventions, including abstinence, faithfulness, and, for populations engaged in high-risk behaviors,³ correct and consistent condom use.

1. Abstinence (A) and Be Faithful (B)

- Number of community outreach and/or mass media (radio) programs that are A/B focused
- Number of individuals reached through community outreach and/or mass media (radio) programs that are A/B focused.

B. Care and Support

1. Confidential counseling and testing

- Number of patients who accept confidential counseling and testing in a health-care setting.
- Number of clients served, direct.
- Number of people trained in confidential counseling and testing, direct, including health-care workers.

2. Orphans and Vulnerable Children (OVC)

Number of service outlets/programs, direct and/or indirect.

- Number of clients (OVC) served, direct and/or indirect.
- Number of persons trained to serve OVC, direct.

3. Palliative Care: Basic Health Care and Support

- Number of service outlets/programs that provide palliative care, direct and/or indirect.
- Number of service outlets/programs that link HIV care with malaria and tuberculosis care and/or referral, direct and/or indirect.
- Number of clients served with palliative care, direct and/or indirect.
- Number of persons trained in providing palliative care, direct.

C. HIV Treatment with ART

- Number of clients enrolled in ART, direct and indirect.
- Number of persons trained in providing ART, direct.

D. Strategic Information

- Number of persons trained in strategic information, direct.

³ Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

E. Expanded Indigenous Sustainable Response

- Project-specific quantifiable milestones to measure the following:
 - a. Indigenous capacity-building.
 - b. Progress toward sustainability.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding:

\$2,250,000 (This amount is an estimate, and is subject to availability of funds).

Approximate Number of Awards: One.

Approximate Average Award:

\$450,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: \$400,000.

Ceiling of Award Range: \$450,000 (This ceiling is for the first 12 month budget period.)

Anticipated Award Date: October 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Public and private non-profit and for-profit organizations may submit applications, such as:

- Public, non-profit organizations
- Private, non-profit organizations
- For-profit organizations
- Small, minority-owned, and women-owned businesses
- Colleges
- Universities
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the

Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)

In addition, applicants must meet the criteria listed below:

1. Be indigenous to Haiti
2. Have documented experience in strengthening and expanding HIV/AIDS treatment, care and support for prostitutes and their associated sexual partners
3. Have established working relationships with prostitutes and have documented experience in providing care to them
4. Demonstrate current or past capacity to coordinate activities with HHS and other agencies of the United States Government

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not enter into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify that your application did not meet submission requirements.

- HHS will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161-1.

Electronic Submission: HHS strongly encourages the applicant to submit the application electronically by using the forms and instructions posted for this

announcement on www.Grants.gov, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC web site, at the following Internet address: <http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point un-reduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Double spaced
- Numbered pages
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Executive Summary—Provide a clear and concise summary of the proposed goals, major objectives and activities required for achievement of program goals, and amount of funding requested for budget year one of this cooperative agreement. Additionally, provide an outline of goals and objective to be addressed in years two through five.

- Need—Describe the need for such services in Haiti. Include any data on STI and HIV prevalence rates.

- Capacity—Demonstrate the current capability/capacity of organization.

- Expansion—Identify and secure appropriate (accessible and discreet) and suitable rental property for new voluntary confidential counseling and testing (VCT) clinics in the following locations: Cap Haïtien; Jacmel; Gonaïves; or Saint Marc. The confidential VCT clinics should be well-equipped to deliver prevention, care, treatment, and referral in local

languages for prostitutes and their associated sexual partners, including by discouraging men from visiting prostitutes.

- Personnel—Recruit and hire clinic personnel to provide a comprehensive HIV/AIDS service-delivery facility to address the needs of the target population. This should include STI screening and treatment, confidential HIV testing and counseling, and referrals for care and treatment for HIV-positive persons.

- Training—Coordinate local language training of local health care professionals, including physicians, nurses, lab technicians, pharmacy technicians, community health workers and peer educators, in the following:

1. STI screening and treatment training.
2. Confidential counseling and testing (CT).
3. Design and implementation of care.
4. Monitoring and evaluation of programs.
5. Maintenance of laboratory equipment.
6. Laboratory safety and proper disposal of biohazardous materials protocol.
7. Use of universal precautions and the management of needle-stick or splash injuries.
8. In-service trainings for lab personnel to review new and best practice techniques and solicit "insider insight"—an account of implementation success, and challenges in an effort to identify gaps in resources or effectiveness of particular protocols.

- Laboratory Capacity—Provide basic laboratory services in support of HIV/AIDS diagnosis and treatment:

1. Perform CD4 counts.
2. Perform complete blood counts.
3. Perform HIV rapid testing.
4. Perform confirmatory HIV/AIDS testing.
5. Test for sexually transmitted infections (STI).
6. Provide counseling of test results.
7. Provide referrals to appropriate prevention, treatment care and support services.

- Drugs and Commodities—Procure drugs and commodities through a transparent and competitive process:

1. STI drugs for HIV-positive persons.
2. Condoms. Awardees may not implement condom social marketing aimed at prostitutes without also promoting abstinence and faithfulness messages to current and potential clients of prostitutes.

(The awardees must obtain all appropriate approvals required by HHS to purchase any medications.)

- Outreach—Provide educational services in awareness, prevention and

treatment of HIV/AIDS among current and potential clients of prostitutes:

1. Develop target population-specific advertisement/health promotion strategies to make this population aware of clinics through peer education and to discourage them from visiting prostitutes.

2. Establish baseline information regarding knowledge of HIV/AIDS transmission and sexual practices of the target population.

3. Assess attitudes and behaviors within the target population.

4. Develop and implement long-term behavioral-change communication (BCC) campaigns, including to make visiting prostitutes outside of community social norms.

5. Promote condom distribution and correct and consistent use for populations engaged in high-risk behavior.⁴ Awardees may not implement condom social marketing aimed at prostitutes without also promoting abstinence and faithfulness messages to current and potential clients of prostitutes.

- Develop and implement behavior change strategies and long-term campaigns, including information; education and communication (IEC); targeted accessibility planning; and training programs for prostitutes who are seeking alternative means to address economic needs.

- Management and Supervision—Manage and supervise clinic operations and staff who perform CD4 counts:

1. Implement report-writing requirements.

2. Develop and implement a financial management system.

3. Engage in strategic planning.

4. Network with local partners within the private and public sector to ensure an effective patient referral system between confidential VCT and ART networks for patients who test HIV-positive.

Cross-Border Collaboration: Recipient will establish partnerships with agencies in the bordering country of the Dominican Republic (DR) to provide outreach to migrant prostitutes along the Haiti/DR border. Monitoring and Evaluation—Implement monitoring and

⁴ Behaviors that increase risk for HIV transmission including engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

evaluation strategies to assess programmatic effectiveness, including:

1. Number of the target population accessing clinical care.

2. Number of referrals made to appropriate prevention, treatment, and care and support care networks.

3. Number of prevention promotion activities held, including events to discourage men from visiting prostitutes.

4. Number and findings of participant evaluations.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes:

- Budget Justification (for first year only)

- Curriculum Vitas or Resumes

- Organizational Charts

- Letters of Support

The budget justification will not count in the narrative page limit.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the HHS/CDC Web site at: <http://www.cdc.gov/od/pgo/funding/grantmain.htm>.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date:
September 29, 2005.

Explanation of Deadlines:

Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at www.grants.gov. We consider applications completed on-line through Grants.gov formally submitted when the applicant organization's Authorizing Official electronically submits the application to www.grants.gov. We will consider

electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov, the application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will be discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.

- Antiretroviral Drugs—Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the

exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

- Needle Exchange—No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services.

Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.

- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities: The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and

dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. § 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents

and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'" addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV. 6. Other Submission Requirements

Application Submission Address:
Electronic Submission:

HHS/CDC strongly encourages applicants to submit applications electronically at www.grants.gov. Applicants can download the application package from www.grants.gov. Applicants are able to complete it off-line, and then upload and submit the application via the Grants.gov web site. We will not accept e-mail submissions. If the applicant has technical difficulties in Grants.gov, the applicant can reach customer service by E-mail at support@grants.gov or by phone at 1-800-518-4726 (1-800-518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that submittal of the application to Grants.gov should be early to resolve any unanticipated difficulties prior to the deadline. Applicants may also submit a back-up paper submission of the application. We must receive any such paper submission

in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that the applicant submit the grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If the applicant does not have access to Microsoft Office products, the applicant may submit a PDF file. The applicant may find directions for creating PDF on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

OR

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management-AA158, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Need (20 Points)

To what extent does the applicant justify the need for this program within the target community?

2. Monitoring Evaluation and Reporting (20 points)

Does the applicant describe a system for reviewing and adjusting program activities based on monitoring information? Does the plan include indicators developed for each program milestone and incorporated into the financial and programmatic reports? Are all the indicators drawn from the

Emergency Plan for AIDS Relief Indicator Guide, found at <http://www.pepfarhaiti.com>? Will the system generate financial and program reports to show disbursement of funds, and progress towards achieving the program objectives of the President's Plan for AIDS Relief?

3. Work Plan (20 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti to achieve the goals of the Emergency Plan? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan include quantitative process and outcome measures?

4. Methods (15 Points)

Are the proposed methods feasible? To what extent will they accomplish the numerical goals of the President's Emergency Plan?

5. Personnel (15 Points)

Do the staff members have appropriate experience, including local language skills? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals?

6. Eligibility (10 points)

Organizations indigenous to Haiti must have between three to five years of experience in provision of STI and HIV/AIDS care to prostitutes and their associated sexual partners, and must currently have high coverage in zones with rampant prostitution, including along the border between Haiti and the Dominican Republic. Organizations must be willing and able to undertake campaigns to discourage men from visiting prostitutes.

7. Budget and Justification (Reviewed, but not scored)

Is the budget itemized, well justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Haiti?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and the HHS Global AIDS Program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office in Haiti. The panel can include both Federal and non-Federal participants.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

October 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

Successful applicants must comply with the administrative requirements outlined in 45 CFR Part 74, as appropriate.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions
- AR-5 HIV Program Review Panel Requirements
- AR-6 Patient Care
- AR-8 Public Health System Reporting Requirements
- AR-9 Paperwork Reduction Act Requirements
- AR-10 Smoke-Free Workplace Requirements
- AR-25 Release and Sharing of Data

Applicants may find additional information on these requirements on the HHS/CDC web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

Applicants need to include an additional Certifications form from the

PHS5161-1 application in the Grants.gov electronic submission only. Applicants should refer to <http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf>. Once the applicant has filled out the form, please attach it to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Budget and budget narrative with justification.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Requested Information.

2. Annual Progress Reports are due within 30 days of the end of each budget period. The report should detail progress toward achieving program milestones and projected next year activities. You must develop indicators for each program milestone and incorporate them into the annual financial and programmatic reports. The report should include progress against the numerical goals of the President's Emergency Plan AIDS Relief for Haiti.

3. Financial status report, no more than 90 days after the end of the budget period. The financial report must show obligations, disbursements and funds remaining by program activity. The applicant must develop indicators for each program milestone and incorporate them into the periodic financial and programmatic reports. The applicant must draw indicators from The Emergency Plan Indicator Guide.

4. Final performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management

Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700.

For program technical assistance, contact: Kathy Grooms, Country Program Officer, CDC, NCHSTP, Global AIDS Program, U.S. Department of Health and Human Services, 1600 Clifton Road, MS E-04, Atlanta, GA 30333, Telephone: 404-639-8394, Email: Kgrooms@cdc.gov.

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2724, E-mail: VEW4@CDC.GOV.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: <http://www.cdc.gov> (Click on "Funding" then "Grants and Cooperative Agreements"), and on the Web site of the HHS Office of Global Health Affairs, Internet address: <http://www.globalhealth.gov>.

Dated: August 31, 2005.

William P. Nichols,

*Director, Procurement and Grants Office,
Centers for Disease Control and Prevention.*

[FR Doc. 05-17673 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Improving HIV/AIDS Data Collection at the National, State and Municipal Levels in the Federative Republic of Brazil Through Strengthening HIV Surveillance Infrastructure and Building Capacity in the Use of Data for Program Evaluation and Assessment as Part of the President's Emergency Plan for AIDS Relief

Announcement Type: New.

Funding Opportunity Number: AA104.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 29, 2004.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241

and 242], as amended, and under Public Law 108-25 (United States Leadership against HIV/AIDS, Tuberculosis and Malaria Act of 2004) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS, and supports programs in more than 100 countries. The five-year strategy for the Emergency Plan is available at the following Internet address: <http://www.state.gov/s/gac/rl/or/c11652.htm>.

In Brazil, the Emergency Plan seeks to engage both governmental and non-governmental institutions at all levels to bolster the already-robust provision of care and treatment to HIV-positive people, and to strengthen prevention activities to avoid new cases of HIV.

The U.S. Department of Health and Human Services (HHS) announces the availability of Fiscal Year (FY) 2005 funds for a cooperative agreement to work with the National HIV/AIDS Program of Brazil (National Program), and Brazilian community-based and faith-based organizations, for the improvement and expansion of HIV/AIDS prevention, care and support activities in Brazil.

Purpose: The purpose of this cooperative agreement is to provide a funding mechanism and management support for HHS/CDC joint activities with the Brazilian National AIDS Program and community-based and faith-based organizations in the area of HIV/AIDS and associated diseases, including tuberculosis. Joint activities in Fiscal Year (FY) 2005 will focus on strengthening the capacity of the Brazilian National AIDS Program in two of the following areas, through cooperation between the award recipient and the National Program and HHS and its Brazilian and international partners: (1) Adapting surveillance infrastructure to respond to a concentrated epidemic; and (2) broadening the skill base of Brazilian government and non-government personnel, at the Federal, State, and municipal levels, in the use of data for program evaluation and assessment.

These collaborative activities could have a profound impact on the implementation of the Brazilian National AIDS Plan, which calls for central-level policy formulation and decentralized implementation of programs. Successful implementation of a sound monitoring and evaluation system (that includes improved research capacity for program evaluation and surveillance infrastructure), and the use of this system, will improve collection of data to direct program design;

determine the effectiveness of interventions; and substantially improve the ability to make sound policy decisions. These activities will strengthen ties between the Brazilian National AIDS Program, states, municipalities and non-governmental organizations (NGOs), including faith-based organizations, that work with HIV/AIDS-related programs, and could eventually lead to significant improvements in coordination of HIV/AIDS prevention and care activities country-wide.

Measurable outcomes of the program will be in alignment with the five-year strategy for the President's Emergency Plan for AIDS Relief, and one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, the U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among persons 15 to 24 years of age.

This announcement is only for non-research activities supported by CDC. If applicants propose research, HHS/CDC will not review the application. For the definition of "research," please see the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

Activities

Awardee Activities for this program are as follows:

1. Assist the Brazilian National HIV/AIDS Program to further build capacity within its surveillance, operational research, and monitoring and evaluation technical units.
2. Support the Brazilian National HIV/AIDS Program and community-based and faith-based organizations in increasing the skills and methodology in data use for targeted services evaluation and assessment, and to set subsequently the operational research agenda of the National Program.
3. Provide support to the Brazilian National HIV/AIDS Program for the development of national protocols and the implementation of national training programs to instruct both government and non-government staff in the areas of prevention and care of HIV and associated diseases, confidential voluntary counseling and testing (VCT), and prevention of mother-to-child transmission (PMTCT).
4. Assist the Brazilian National HIV/AIDS Program in the decentralization of

program management to the regional, state and municipal levels, and in working with non-governmental organizations, including faith-based organizations.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Provide technical assistance to the Brazilian National HIV/AIDS Program and community-based and faith-based organizations to develop and implement monitoring and evaluation activities, perform analyses, and provide expertise for training and capacity-building.
2. Facilitate and coordinate regional and U.S.-based international technical assistance to the project upon request (*i.e.*, workshops, trainings and technical consultations), in the Portuguese language.
3. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.
4. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.
5. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.
6. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.
7. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.
8. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.
9. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and

budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

10. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

11. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements

II. Award Information

Type of Award: Cooperative Agreement. HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: \$250,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: \$83,500 (This amount is for the first 12-month budget period, and includes direct costs).

Floor of Award Range: None.

Ceiling of Award Range: \$150,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: October 25, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, as determined by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Limited Competition: Public or private not-for-profit organizations within Brazil that meet the following criteria may submit applications: (1) Ability to demonstrate past and current experience in collaborating with international organizations and Brazilian faith-based and community-based organizations; (2) ability to

demonstrate past experience in collaborating with the National AIDS Program of Brazil (National Program); (3) ability to disburse funds to a Brazilian Federal governmental institution and to other non-governmental organizations; and (4) ability to demonstrate a strong linkage with one or more public health and/or medical university institutions and with community-based and faith-based organizations.

The National AIDS Program of the Ministry of Health of Brazil (National Program) is HHS/CDC Global AIDS Program's (GAP) primary partner in Brazil. HHS/CDC GAP Brazil's program is focused on meeting the needs of the National Program, and all program activities are planned in pursuance of this goal. HHS/CDC will provide funding to a management foundation that manages the money on behalf of the Ministry and funds its activities. HHS believes that it is in the best interest of the U.S. Government to establish the above criteria as minimum standards to ensure both the appropriate management of funds and selection of an organization that can immediately become engaged in the activities listed in this announcement; and, thus, to benefit the people of Brazil as quickly as possible.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

Special Requirements

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. You will be notified that your application did not meet submission requirements.

- HHS/CDC considers late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.
- Applicant must document eligibility, in an appendix to their application, by submitting either letters of support from partner institutions, acknowledging cooperation, or official annual reports that document partnership with the aforementioned groups.

• *Note:* Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal

Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161-1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at <http://www.grants.gov>.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address:

<http://www.cdc.gov/od/pgo/forminfo.htm>.

If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770-488-2700. We can mail application forms to you.

IV. 2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point un-reduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Your application MUST be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- **Project Description.** Demonstrate a clear and concise understanding of the nature of the problem described in the purpose section of this announcement. Describe the public health importance of the planned activities to be undertaken.

- **Plan of Action.** Present an overall design strategy, with proposed objectives and projects and measurable timelines. Describe how your organization will meet stated requirements. Describe the responsibilities for each of the key staff.

- **Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief**

- **Evaluation.** Provide a monitoring and evaluation plan for the project.
- **Itemized Budget.** Budget and budget justifications will not count toward the stated page limit.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Curriculum Vitas/Resumes
- Organizational Charts
- Documentation of partnerships (letters of support, annual reports)
- Job descriptions of proposed key positions to be created for the activity
- Quality-Assurance, Monitoring-and-Evaluation, and Strategic-Information Forms
- Applicant's Corporate Capability Statement
- Letters of Support
- Evidence of Legal Organizational Structure

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711.

For more information, see the HHS/CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcomm.htm>.

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV. 3. Submission Dates and Times

Application Deadline Date: September 29, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at <http://www.grants.gov>. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to <http://www.grants.gov>. We will consider

electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because of: (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at: 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- The purchase of antiretroviral drugs, reagents and laboratory equipment for antiretroviral treatment projects requires prior approval in writing by CDC officials.

- No funds shall be used to distribute sterile needles or syringes for the hypodermic use of any illegal drug.

- Funds may be spent for reasonable program purposes, including personnel; travel; operating costs, including supplies; fuel for transportation; utilities; staff training costs, including registration fees and purchase and rental of training related equipment; renovation of clinical or lab facilities; and purchase of HIV testing reagents, test kits and laboratory equipment for HIV testing and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.

- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.

- The applicant may contract with other organizations under this program; however the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of

its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'"') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages applicants to submit electronically at: <http://www.grants.gov>. You will be able to download a copy of the application package from <http://www.grants.gov>, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at support@grants.gov, or by phone at 1-800-518-4726 (1-800-518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark

the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management-AA104 CDC Procurement and Grants Office U.S. Department of Health and Human Services 2920 Brandywine Road Atlanta, GA 30341

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Technical Approach (25 points). Does the applicant's proposal include an overall design strategy, with measurable time lines, that is realistic, achievable, time-framed and appropriate? Does the application appropriately address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives? Does the applicant have a commitment to train both public and private health care workers in local languages?

2. Understanding of the Problem (20 points). Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? This specifically includes description of the public health importance of the planned activities to be undertaken and

realistic presentation of proposed objectives and projects. Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive project and meet the goals of the Emergency Plan?

3. Ability to Carry Out the Project (20 points). Does the applicant document demonstrate capability to achieve the purpose of the project and provide training in the Portuguese language?

4. Personnel (20 points). Are the professional personnel involved in this project qualified (*i.e.*, is there evidence included of experience in working with HIV/AIDS and associated diseases and HIV surveillance and Portuguese-language fluency)?

5. Plans for Administration and Management of Projects (15 points). Are there adequate plans for administering the project and adequate financial controls to account for the finances covered under this cooperative agreement? Does the applicant have transparent and competitive procedures for performing and procurement necessary under this project?

6. Budget (not scored). Is the itemized budget for conducting the project, and its justification, reasonable and consistent with stated objectives and planned program activities, and with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Brazil?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Brazilian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably

local. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

October 25, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions
- AR-5 HIV Program Review Panel Requirements
- AR-12 Lobbying Restrictions
- AR-14 Accounting System Requirements

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

You need to include an additional Certifications form from the PHS 5161-1 application in your Grants.gov electronic submission only. Please refer to <http://www.cdc.gov/od/pgo/funding/PHS51611Certificates.pdf>. Once you have filled out the form, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, due no less than 90 days before the end of the

budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Brazil.

f. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, due no later than 90 days after the end of the project period.

4. Annual progress report, due no later than 90 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Brazil.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2700

For program technical assistance, contact:

Brazil Contact.

William Brady, Co-Project Officer, HHS/CDC, Global AIDS Program (GAP), Brazil, Unit 3500, APO AA 34030, Telephone: 55 (61) 273-4851, E-mail: web0@cdc.gov.

Atlanta Contact.

Eddas Bennett, Co-Project Officer, 1600 Clifton Rd., MS E-04, Atlanta, GA 30333, Telephone: 404-639-6305, E-mail: ebennett@cdc.gov.

For financial, grants management, or budget assistance, contact:

Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770-488-2724, E-mail: vwalker@cdc.gov.

VIII. Other Information

Applicants can find this and other HHS/CDC funding opportunity

announcements on the HHS/CDC Web site, Internet address: <http://www.cdc.gov> (click on "Funding" then "Grants and Cooperative Agreements"), and on the Web site of the HHS Office of Global Health Affairs, Internet address: <http://www.globalhealth.gov>.

Dated: August 31, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05-17675 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Support for Programs Designed To Reduce the Impact of HIV in Southern Sudan, Under the President's Emergency Plan for AIDS Relief

Announcement Type: New.
Funding Opportunity Number: CDC-RFA-AA211.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 29, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301 (a) and 307 of the Public Health Service Act, [42 U.S.C. Sections 241 and 2421], as amended and under Public Law 108-25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: <http://www.state.gov/s/gac/rl/or/c11652.htm>.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and

design a customized program of assistance that fits within the host nation's strategic plan.

The HHS Global AIDS Program (GAP) has established field operations to support national HIV/AIDS control programs in 25 countries and to build capacity to address the global AIDS pandemic. HHS/GAP provides financial and technical assistance through partnerships with governments, community- and faith-based organizations, the private sector and national and international entities.

HHS/CDC/GAP works with the other offices within the Centers for Disease Control and Prevention (CDC), Health Resources and Services Administration (HRSA), and the National Institutes of Health (NIH) within HHS; the U.S. Agency for International Development (USAID); Peace Corps; the U.S. Departments of State, Labor and Defense; and other agencies and organizations. These efforts complement multilateral efforts, including those of the Joint United Nations Programme on HIV/AIDS (UNAIDS); the Global Fund to Fight HIV, TB and Malaria (GFATM); World Bank funding; and other private-sector donation programs.

The U.S. Government seeks to reduce the impact of HIV/AIDS in specific countries within sub-Saharan Africa, Asia, and the Americas through the President's Emergency Plan for AIDS Relief (The Emergency Plan). Through this new initiative, HHS/GAP will continue to work with host countries to strengthen capacity and expand activities in the areas of: (1) Primary HIV prevention; (2) HIV care, support, and treatment; and (3) capacity and infrastructure development, especially for surveillance and training.

As Southern Sudan emerges from a long civil war, HIV prevention, care, and strategic information activities and programs remain quite limited. The President's Emergency Plan has designated funds for HIV control in Southern Sudan through this announcement.

The approach taken by HHS/GAP and USAID in Southern Sudan, is similar to that in countries with larger programs, emphasizing collaboration with other agencies.

HHS/GAP and HHS/CDC Kenya support HIV-control efforts in Southern Sudan by providing technical assistance, directly and indirectly, to government bodies of the Sudan People's Liberation Movement (SPLM) and other partners, and by providing funding for program activities. HHS/CDC is involved in developing protocols and guidelines for specific program areas including sentinel surveillance;

PMTCT and HIV clinical care; supporting the implementation of PMTCT as part of a pilot Safe Motherhood program primarily supported by the United Nations Children's Fund (UNICEF); working to implement sentinel surveillance in PMTCT sites; providing technical and material support towards the development of HIV public health laboratory capacity; initiating HIV/TB linkage activities in collaboration with the World Health Organization (WHO); working to implement HIV-control activities in the Sudan People's Liberation Army (SPLA), in collaboration with military officials and United Nations and non-governmental organization (NGO) stakeholders; and implementing safe-water interventions.

HHS/GAP's mission in Southern Sudan is to work with Sudanese and international partners to develop, support, and evaluate the effective implementation of interventions to prevent HIV and related illnesses, and to improve care and support for persons with HIV/AIDS. The program aims to build local capacity and promote in-country leadership and ownership of activities; focus on national and local priorities; share experiences and technical information and coordinate activities with other programs; and use local expertise, whenever possible.

Specifically, HHS/GAP's mission in Southern Sudan is to accomplish the following, as part of the President's Emergency Plan for AIDS Relief:

1. Provide support and training for HIV/AIDS prevention and care in health care facilities and in the community;
2. Establish training expertise for confidential HIV/AIDS testing and counseling in Southern Sudan; and
3. Strengthen the local and national responses to HIV/AIDS in Southern Sudan through support and collaboration with the National AIDS Council (NAC), private and NGO health sectors, and others.

Purpose: The purpose of this program is to improve the capacity of organizations that provide clinical care and public health interventions to reduce the impact of HIV in Southern Sudan. The range of activities supported under this announcement include the following: (1) Prevention for the uniformed services of New Sudan (Southern Sudan); (2) confidential counseling and testing {e.g. voluntary counseling and testing (VCT)}; (3) prevention integrated with maternal and child health care and community-based programs; (4) strengthening laboratory capacity for HIV public health functions (sentinel surveillance and quality assurance testing); (5) care and

treatment including both basic evidence-based care for persons with HIV and highly active anti-retroviral therapy (HAART); and (6) safe-water interventions.

The support for implementing programs under this announcement will vary according to needs, but could include infrastructure modification to essential facilities, equipment procurement, hiring and training staff, and procurement of materials and supplies.

Measurable outcomes of the program will be in alignment with the numerical goals of the President's Emergency Plan and one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) within HHS/CDC: By 2010, work with other countries, international organizations, the Department of State, USAID, and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among people 15 to 24 years of age and to reduce HIV transmission and improve care of persons living with HIV. In addition, the measurable outcomes of the program will be in alignment with the goals of The Emergency Plan as outlined in this Program Announcement.

Specific measurable outcomes from this program will include: (1) The numbers of persons trained in confidential HIV counseling and testing (VCT and healthcare provider-initiated models); (2) number of persons trained in PMTCT; (3) number of persons trained in strategic information (includes M&E, surveillance and/or HMIS); (4) number of individuals trained in the provision of laboratory-related activities; (5) number of individuals trained to provide HIV palliative care (including TB/HIV); (6) numbers of individuals reached through community outreach prevention services; (7) number of individuals received counseling and testing for HIV and received their result; (8) number of service outlets providing the minimum package of PMTCT services according to national and international standards; (9) number of pregnant women who received HIV counseling and testing and received their results; (10) number of pregnant women provided with a complete course of antiretroviral prophylaxis in a PMTCT setting.

This announcement is only for non-research activities supported by HHS, including CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of "research," please see the HHS/CDC Web site at the following Internet

address: <http://www.HHS/CDC.gov/od/ads/opspoll1.htm>.

Activities

Applicant organizations may apply for one or more, or all activities described in this program announcement. Organizations that are implementing HIV control activities may receive direct funding through this program announcement or through sub-grants from awardees.

Specific activities could include one or more of the following:

1. Provide prevention of mother to child transmission (PMTCT) services;
2. Sentinel surveillance specimen collection;
3. HIV laboratory services for sentinel surveillance, quality assessment, and care and treatment
4. Confidential HIV counseling and testing;
5. Development of a permanent HIV counseling and testing training program;
6. Capacity development for government institutions and individuals involved in HIV strategic information and service provision in Southern Sudan;
7. Capacity development for local organizations, including faith-based and other community-based and other non-governmental organizations involved in HIV service provision;
8. Care and treatment programs with and without HAART; and
9. HIV prevention and control for SPLM/A uniformed services personnel and their families.

Integrated approaches at the local level to confidential testing, prevention and care are necessary, and improving the overall quality of health care is essential to HIV control in conflict-affected Southern Sudan.

1. Within the first three months from the date of this award, develop a strategic plan to include goals, objectives, a monitoring plan, and if applicable, an implementation strategy to identify recipients of sub-grants, their implementation activities, and their reporting requirements, consistent with strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

2. Support training of staff of government and non-governmental organizations in relevant program areas, possibly including confidential counseling and testing, PMTCT integrated into strengthened maternal-child health care, HIV/AIDS care and treatment, laboratory methods, and data management.

3. Provide technical assistance to NAC and its staff and future HIV management programs that may be

developed within the Ministry of Health of Southern Sudan to facilitate the development of program management capacity. Such activities should be undertaken in close consultation with HHS/CDC and other partners, especially USAID.

4. Identify project staffing needs, including administrative, management and technical staff; hire and train staff.

5. Identify furnishings, fittings, equipment and other fixed asset procurement needs of the project and implementing partners, and acquire from normal local, regional or international vendors, as appropriate, in a transparent and competitive process.

6. Establish an acceptable reporting structure. Provide fiscal oversight and technical assistance to local partners in the areas of program and financial management, administration, personnel management, data management, and other aspects of institution strengthening.

7. Develop mechanisms for sharing information, including sharing of lessons learned among local partners and including referral systems between partners when appropriate.

8. Monitor, assess and report on the performance of the local partners.

9. Assist the local partners to write reports describing their programs.

10. Provide training and technical assistance to some local partners so they could develop the skills to apply for funds independently and manage funds effectively after the completion of the program.

The recipient or recipients of these funds will be responsible for activities in multiple program areas designed to target underserved populations in Southern Sudan. Either the awardee (or awardees) will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardees will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee is expected to work closely with HHS/CDC staff in the planning and implementation of program activities. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-

year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Southern Sudan will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined in the announcement. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches, including:

Confidential Counseling and Testing Services

Develop a training program for confidential HIV counseling and testing that will meet expanding program needs including VCT, routine and diagnostic testing in clinical settings, and eventually care and treatment counseling. Confidential counseling and testing capacity in Southern Sudan should be increased through training in counseling, supervision, and laboratory quality assessment. Different curricula could be appropriate for personnel with varying backgrounds and roles, from full-time lay counselors to healthcare workers who will perform some counseling.

Prevention Services

This activity can include PMTCT integrated with basic HIV clinical care and evidence-based maternal and child health, community-based prevention, and strengthening of antenatal surveillance. For example, organizations that operate primary health care centers and hospital should be strengthened, enhancing their capacity to provide integrated HIV prevention and care services including appropriate

confidential testing and counseling; development of comprehensive antenatal and maternity care that include PMTCT of HIV; care and treatment for those infected (care and treatment programs that include HAART are not included under this activity); and prevention and voluntary, age and culturally-appropriate family planning. All facilities offering HIV care to pregnant mothers and their families should develop the capacity to provide basic HIV-related care to HIV-affected families and to effectively refer clients for more comprehensive care. Basic care (also known as palliative care) includes interventions to prevent opportunistic infections (OIs) as well as the treatment of OIs when they occur.

Interventions should promote the ABC model. Methods and strategies must emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those populations who are engaged in high-risk behaviors.¹ Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined in the preceding paragraph.

Laboratory Support for Regional Sentinel Surveillance

Support HIV public health laboratory services within Southern Sudan, at a facility designated by the National AIDS Council. ELISA equipment supplies will be procured separately, and it is anticipated that a GFATM-funded partner (identification pending) will play a substantial role in supporting logistic and data management needs related to HIV surveillance as well as program quality assurance. HHS/CDC laboratory staff will provide substantial technical support. The implementing partner for surveillance laboratory testing will require support for continuing activity, which is expected to include support for one laboratory technician and one data entry staff, with associated material costs.

¹ Behaviors that increase risk for HIV transmission include: engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

Care and Treatment

Contingent upon identification of a suitable site, develop excellence in providing HIV clinical care, including highly active HAART programs, through support to one or more facility-based programs. HIV care and treatment activities will be consistent with national guidelines which are HHS/GAP will provide significant technical assistance and support. Promote knowledge of current HIV care, and support the provision of non-HAART care through training of healthcare providers, technical assistance, and support for equipment and supplies in implementing facilities.

Prevention Activities for the Uniformed Services

Provide HIV prevention services to active and demobilizing SPLA personnel and their families. National health authorities have identified uniformed service personnel as a priority for U.S. Government-supported HIV control efforts. Such interventions should include prevention and confidential VCT, and should be planned in association with the NAC, appropriate SPLA authorities, and current efforts to develop plans and policies for HIV control in the SPLA. Interventions should promote the ABC model. Methods and strategies must emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those populations who are engaged in high-risk behaviors.² Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined in the preceding paragraph.

Safe Water Interventions

Support a pilot program that makes safer water interventions available to one or more communities, conducted in association with HHS/CDC-supported activities described under the "Prevention" (including PMTCT) or "Care and Treatment" sections above. HIV-infected persons are at higher-than-

² Behaviors that increase risk for HIV transmission include: engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home.

average risk of diarrheal disease; therefore, the program should include such an intervention as part of a package of basic care for persons with HIV, and involve healthcare providers and facilities in the promotion of the intervention, although promotion should not be limited to the health-facility level. Studies have shown that variety of interventions designed to improve water and hand hygiene reduce the incidence of diarrheal disease at the household level, including point-of-use water treatment combined with the use of safer household water vessels. Although most studies have focused on the benefits in other vulnerable groups, such as young children, successful efforts can have particular benefits for people with advanced HIV infection.

Awardees activities for this program are as follows:

Administer sub-grants and provide technical assistance to other organizations by developing a plan to support local or international organizations that provide a range of interventions including confidential VCT and other models of HIV testing and counseling, PMTCT, basic HIV care, HAART, and prevention education.

Administration

The successful applicant must comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement (See HHS Activities and Reporting sections below for details), and comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Provide technical assistance, as mutually agreed upon, and revise annually during validation of the first and subsequent annual work plans. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information, project management, confidential counseling and testing, palliative care, treatment literacy, and adult learning techniques.

9. Provide in-country administrative support to help grantee meet U.S. Government financial and reporting requirements.

10. Assist awardees in identifying prospective local partners, and choosing them in a transparent and competitive process.

11. Assist awardee in developing strategies and mechanisms to identify new partners for years two and three.

12. Procure laboratory supplies including rapid, simple HIV and syphilis test kits and ELISA testing supplies.

13. Procure some drugs (non-HAART) and other therapeutics for HIV care and treatment.

14. Play an active role in the development of curricula and training courses, including provision of technical assistance.

15. Provide technical assistance in clinical, counseling and laboratory issues, training, data management, and program monitoring and evaluation.

16. Provide technical assistance with prevention, confidential counseling and testing and data-management issues. Such technical assistance can involve the identification of problems and challenges and collaborative efforts to find practical solutions.

17. Work with other stakeholders to evaluate curriculum and training needs on a continuous basis, and adapt training as necessary to meet the program needs in Southern Sudan, particularly in local languages.

18. Participate in providing support and supervision to implementing partners.

19. Monitor project and budget performance to ensure satisfactory progress towards the goals of the project.

Please note: Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: FY 2006.

Approximate Total Project Period Funding: \$3,000,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Three or more, contingent upon funding.

Approximate Average Award: \$250,000. (The amount will be higher in the first two years because of the need to develop curriculum and train trainers, etc. The amount is for the first 12-month budget period and will include direct costs [and indirect costs in the case of domestic grantees.]

Floor of Individual Award Range: \$50,000.

Ceiling of Individual Award Range: \$1,000,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: October 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country

Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

This announcement is for limited competition.

Eligible applicants that can apply for this funding opportunity are public and private non-profit organizations and governments and their agencies, such as:

- U.S.-Based and International non-profit organizations
- Sudanese non-profit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations

U.S.-based and international organizations that meet the eligibility criteria are welcome to apply.

Applicants must have at least two years of documented experience in conducting *one* of the following activities:

(1) Building the capacity of local and indigenous organizations to conduct health-related activities in Southern Sudan; (2) managing sub-grants to local organizations in Southern Sudan; (3) providing health-related interventions in Southern Sudan; or (4) experience in developing similar HIV-related health programs, especially in other post-conflict settings.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

- Applicant organizations meeting the criteria are eligible to apply for one or more, or all activities described in this program announcement. Applicants should indicate in the application, which activities they plan to implement. Applicants that are capable of providing management, administrative technical support for HHS/CDC/GAP-funded activities in Southern Sudan will be eligible to administer sub-grants to partner organizations. Applicants providing health-related services in Southern Sudan with capacity to implement HIV control activities may also apply for funding by responding directly to this program announcement.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161-1.

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on www.grants.gov.

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at 770-488-2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
 - Font size: 12 point un-reduced.
 - Double spaced
 - Paper size: 8.5 by 11 inches.
 - Page margin size: One inch.
 - Number all pages of the application sequentially from page 1 (application Face Page) to the end of the application, including charts, figures, tables, and appendices.
 - Printed only on one side of the page.

- Held together only by rubber bands or metal clips; not bound in any other way.

- Submitted in English.
- Numbered pages

Your narrative should address activities to be conducted over the entire project period and must include the following items in the order listed:

- Background—what are the underlying issues related to undertaking this project?
- Objectives—What objectives will be achieved by undertaking this project?
- Activities—What activities will be undertaken to achieve stated objectives?
- Methods—What methods will be used to conduct activities?
- Evaluation Framework—What evaluation procedures will be used to determine if the objectives of the project are being met?

- Budget highlighting any supplies mentioned in the program requirements.

- Any proposed capital expenditures.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Organizational charts
- Curriculum vitas
- Letters of support, etc.

The budget and budget justification will not count in the page limit stated above.

Although the narrative addresses activities for the entire project, the applicant should provide a detailed budget only for the first year of activities, while addressing budgetary plans for subsequent years.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711.

For more information, please see the HHS/CDC Web site at: <http://www.cdc.gov/od/pgo/funding/pubcommt.pdf>.

If your application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include your DUNS number in the application cover letter.

Additional requirements that could require you to submit additional documentation with the application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date:
September 29, 2005.

Explanation of Deadlines:
Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern time on the deadline date.

You may submit your application electronically at www.grants.gov. We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to www.grants.gov. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov (<http://www.grants.gov>), your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of the submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at (770) 488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Funds may be used for: Hiring of staff needed to provide services; training service providers; coordination of the program; purchase of supplies, equipment, and commodities (including antiretroviral drugs) needed to provide the services; renovation of clinical facilities at site of program implementation; sensitization of the community on HIV control services; providing ground transportation services to HHS/CDC GAP staff in Southern Sudan, maintaining office and residential facilities for GAP staff.
- Reimbursement of pre-award costs is not allowed.
- Antiretroviral Drugs—The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from the GAP headquarters.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, training, travel, supplies and services. Equipment may be purchased and renovations completed if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organization, regardless of their location.
- The applicant may contract with other organizations under this program;

however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention and care services for which funds are required).

- An annual audit of these funds is required and must be conducted by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC. The audit should specify the use of funds and the appropriateness and reasonableness of expenditures.

- A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution

and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. § 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section,

"Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'"') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, "Prostitution and Related Activities."

IV.6. Other Submission Requirements

Application Submission Address

HHS/CDC strongly encourages applicants to submit applications electronically at www.grants.gov. You will be able to download a copy of the application package from www.Grants.gov, complete it off-line, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, customer service can be reached by e-mail at support@grants.gov, or by phone at 1-800-518-4726 (1-800-518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating a PDF on the Grants.gov web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Submit the original and two hard copies of your application by mail or express delivery service to the following address:

Technical Information Management—
AA211, CDC Procurement and Grants
Office, U.S. Department of Health and
Human Services, 2920 Brandywine
Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative

agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Ability To Carry Out the Project (35 Points)

Does the applicant document demonstrated capability to achieve the purposes of the project? Does the applicant demonstrate an understanding of the issues and problems that face local and indigenous organizations in implementing HIV prevention and care in Sudan? Does the applicant have demonstrated and prior experience in providing capacity building and support to local and indigenous organizations in developing countries? Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant have demonstrated experience in HIV service delivery? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Southern Sudan and meet the goals of the Emergency Plan?

2. Plans for Administration and Management of the Project (25 Points)

Are there adequate plans for administering the project? Does the applicant describe activities that are realistic, achievable, time-framed and appropriate to complete this program? Does the application include an overall design strategy, including measurable time lines, clear monitoring and evaluation procedures, and specific activities for meeting the proposed objectives? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

3. Personnel (25 Points)

Do the personnel have appropriate technical qualifications, and are they fluent in local languages spoken in Southern Sudan? Are the professional personnel involved in this project qualified, including prior experience with improving the capacity of local and indigenous organizations or delivering

the specified services in Sudan or elsewhere in developing countries?

4. Administrative, Evaluation and Accounting Plan (15 Points)

Is there a plan to account for, prepare reports, monitoring and audit expenditures under this agreement, manage the resources of the program and produce, collect and analyze performance data?

5. Budget (Not Scored)

Is the budget itemized, well justified and consistent with the five-year strategy and goals for the President's Emergency Plan and Emergency Plan activities in Southern Sudan? Does the budget reflect a commitment to ensure that local organizations receive an adequate percentage of the total award to ensure they can achieve their targets? Is the percentage of funds designated for administration and capacity building, including technical oversight from a head office, reasonable?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Southern Sudanese organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

October 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 as Appropriate

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions

- AR-6 Patient Care
- AR-8 Public Health System

Reporting Requirements

- AR-12 Lobbying Restrictions
- AR-14 Accounting System

Requirements

- AR-15 Proof of Non-Profit Status
- AR-23 States and Faith Based

Organization

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

You need to include an additional Certifications form from the PHS 5161-1 application in your Grants.gov electronic submission only. Please refer to <http://www.cdc.gov/od/pgo/funding/PHS5161-11Certificates.pdf>. Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. In year one, quarterly progress reports, due 30 days after the end of each quarter. In subsequent years, a semi-annual progress report is required no later than 30 days after the reporting period.

2. Interim progress report, no less than 90 days before the end of the

budget period. The progress report will serve as the non-competing continuation application, and must contain the following elements:

- a. Current Budget Period Activities Objectives.

- b. Current Budget Period Financial Progress.

- c. New Budget Period Program Proposed Activity Objectives.

- d. Budget.

- e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Southern Sudan.

- f. Additional Requested Information.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

5. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Southern Sudan.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2700.

For program technical assistance, contact: Thomas Boo, Medical Officer, GAP, CDC-Kenya, Centers for Disease Control and Prevention, HHS/CDC Global AIDS Program, P.O. Box 606 Village Market, 00621 Nairobi, Kenya. Telephone: 254-20-271-3008, ext. 149 or Mobile: +254-722-200-189. E-mail: tboo@ke.cdc.gov.

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2072. E-mail: dmf6@cdc.gov.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: www.cdc.gov (Click on "Funding" then "Grants and Cooperative Agreements"), and on the

Web site of the HHS Office of Global Health Affairs, Internet address: www.globalhealth.gov.

Dated: August 31, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05-17678 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancement of Laboratory Quality System Approach in Building the Capacity of Health Laboratories To Support HIV/AIDS Prevention, Care and Treatment Services in the United Republic of Tanzania

Announcement Type: New.

Funding Opportunity Number: CDC-RFA-AA086.

Catalog of Federal Domestic

Assistance Number: 93.067.

Key Date: Application Deadline: October 3, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242], as amended, and under Public Law 108-25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS.

The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: <http://www.state.gov/s/gac/rl/or/c11652.htm>.

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Tanzania are to treat at least 150,000 HIV-infected individuals, and care for 750,000 HIV-affected individuals, including orphans.

Purpose: The purpose of this cooperative agreement is to collaborate

with the National Institute for Medical Research (NIMR), and the Tanzanian Ministry of Health (MOH) to establish the National Laboratory Quality Assurance and Training Center that will: (1) Provide leadership in HIV/AIDS related laboratory training; and (2) provide technical assistance and leadership in assuring highly functional and operational testing systems, and assuring quality systems integration, in building the capacity of health laboratories to support HIV/AIDS prevention, care and treatment in the United Republic of Tanzania.

Measurable outcomes of the program will be in alignment with the performance goals of the President's Emergency Plan and with one (or more) of the following performance goal(s) for the National Center for HIV, Sexually Transmitted Diseases, and Tuberculosis Prevention of the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS): By 2010, work with other countries, international organizations, the Department of State, United States Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age, reducing HIV transmission, and improving care of persons living with HIV/AIDS (PLWHA).

Activities: Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Tanzania will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee activities for this program are as follows:

1. Provide leadership in HIV/AIDS-related laboratory training:
 - a. Develop training materials (including doing educational design) for

local training and at the peripheral levels.

- b. Deliver training in HIV/AIDS-related testing and testing-specific quality assurance.

- c. Train trainers in a laboratory-quality systems approach.

- d. Serve as a central area for receiving and delivering distance-based training (e.g., satellite- and Internet-based training).

- e. Serve as liaison with international training efforts with the goal of producing standardized, harmonized curricula.

2. Provide technical assistance and leadership in assuring highly functional and operational testing systems, and assuring quality systems integration, in building the capacity of health laboratories to support HIV/AIDS prevention, care and treatment:
 - a. Provide assistance and leadership in the development of standard operating procedures for quality system components (for example: Sample management; process control; and information management).

- b. Serve as the primary resource for receipt of, and knowledge transfer of, international standards and guidelines for quality systems, such as those from the International Organization for Standardization (IOS) and the U.S. National Committee for Clinical Laboratory Standards (NCCLS).

- c. Provide technical assistance and coordination support for external quality-assessment (proficiency testing) programs.

3. Serve as a supra-reference laboratory for HIV-related Testing in Tanzania:
 - a. Evaluate, provide and assist, when needed, with technology transfer for new diagnostic tests, diagnostic testing algorithms, tests to stage disease and monitor immune function, and tests for anti-retroviral resistance.

- b. Serve as the ultimate referral laboratory in Tanzania for samples that present unusual or unique testing.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Collaborate with the applicant, the Tanzania MOH and other in-country and international partners, in the development of plans for program assistance based on the country needs, the HHS technical assistance portfolio, and HIV laboratory activities conducted by other partners.

2. Provide consultation and scientific and technical assistance based on the "CDC Global AIDS Program (GAP)

Technical Strategies" document to promote the use of best practices known at the time.

3. Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program technical assistance activities. HHS will act as liaison and assist in coordinating activities, as required, between the applicant and other non-governmental organizations (NGOs), the Government of the United Republic of Tanzania, and other Emergency Plan partners.

Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

This announcement is only for non-research activities supported by HHS/CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of "research", please see the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/ads/opspoll1.htm>.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2006.

Approximate Total Funding: \$3,600,000. (This amount is an estimate for the entire project period, and is subject to availability of funds.)

Approximate Number of Awards: Two.

Approximate Average Award: \$450,000. (This amount is for the first 12-month budget period, and includes indirect costs.)

Floor of Award Range: None.

Ceiling of Award Range: \$600,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: October 30, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- For profit organizations.
- Small, minority, women-owned businesses.
- Community-based organizations.
- Research institutions.
- Hospitals.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

• Political subdivisions of States (in consultation with States).

In addition, applicants must meet the criteria listed below:

- Be local indigenous to Tanzania.
- Have at least three years of documented HIV/AIDS related program implementation experience in Tanzania particularly related laboratory training and lab quality assurance.
- Provide letters of support from the Tanzania Ministry of Health and the National Institute for Medical Research as evidence of having established working relationships that can build upon an existing framework.

III.2. Cost Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

• HHS/CDC will consider late applications non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting a grant, loan, or an award.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161-1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on www.Grants.gov, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at 770-488-2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 35. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point un-reduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- You MUST submit your application in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Executive Summary.
- Provide a clear and concise summary of the proposed goals, major objectives and activities required for achievement

of program goals, the amount of funding requested for budget year one of this cooperative agreement, and the project's contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief.

• **Needs Assessment and Capacity**
Describe the documented need for the proposed activities; current activities that provide relevant experience and expertise to perform the proposed activities; and collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

• **Year One Operational and Evaluation Plan**

Provide specific, measurable, and time-phased year one objectives for each proposed project; the specific activities proposed to achieve the year one objectives; and a projected timetable for completion that displays dates for the accomplishment of tasks and identifies responsible parties. For each year one objective, specify how achievement will be measured and documented.

• **Four-Year Plan**

Describe realistic four-year goals and measurable, time-phased objectives for each proposed project; the major activities to achieve each objective; plans for collaboration with partners, including the CDC; and the evaluation process that will be used to determine effectiveness and initiate modifications, as needed.

• **Management and Staffing Plan**

Describe how the program will be effectively managed. Include the following:

- a. Management structure, including the lines of authority and plans for fiscal control.
- b. The staff positions responsible for implementation of the program.
- c. Qualifications and experience of the designated staff.

• **Budget and Justification**

Provide a detailed 12-month budget request and line item justification that is consistent with the purpose of the program and the proposed objectives and activities. The budget must be included within the 35 pages.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Curriculum Vitas.
- Resumes.
- Organizational Charts.
- Letters of Support.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a

nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access www.dunandbradstreet.com or call 1-866-705-5711.

For more information, see the HHS/CDC Web site at: <http://www.cdc.gov/od/pgo/funding/grantmain.htm>. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

Application Deadline Date: October 7, 2005.

Explanation of Deadlines:

Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your applications electronically at www.grants.gov. We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to www.grants.gov. Electronic applications will be considered as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically through Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as having been received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of the submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO-TIM staff at 770-488-2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on the application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may not be used for any new construction.
- Antiretroviral drugs—the purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval in writing from HHS/CDC officials.
- Needle exchange—No funds appropriated under this solicitation shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the

World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations, regardless of their location.

- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standard(s) or equivalent standards approved in writing by HHS/CDC.

- A Fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document ("recipient") cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any "exempt organizations" (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, "Prostitution and Related Activities," in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, "Prostitution and Related Activities," is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, "Prostitution and Related Activities."

All prime recipients that receive U.S. Government funds ("prime recipients") in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (e.g., "[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.'"') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, "Prostitution and Related Activities," is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this

section, "Prostitution and Related Activities."

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: <http://www.cdc.gov/od/pgo/funding/budgetguide.htm>.

IV.6. Other Submission Requirements

Application Submission Address

Electronic Submission: HHS/CDC strongly encourages you to submit electronically at www.Grants.gov. The application package can be downloaded from www.Grants.gov. You will be able to complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, customer service can be reached by e-mail at support@grants.gov or by phone at 1-800-518-4726 (1-800-518-GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: "BACK-UP FOR ELECTRONIC SUBMISSION."

The paper submission must conform with all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, the electronic version will be considered the official submission.

We strongly recommend that you submit the grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, a PDF file may be submitted. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Paper Submission: Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management-AA086, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Technical Approach (25 Points)

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, measurable and appropriate to achieve the goals of the Emergency Plan? Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives?

2. Understanding of the Problem (20 Points)

Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the proposal specifically include a description of the public health importance of the planned activities to be undertaken, and a realistic presentation of proposed objectives and projects?

3. Ability To Carry Out the Project (20 Points)

Does the applicant document demonstrated capability to achieve the purpose of the project?

4. Personnel (20 Points)

Are the professional personnel involved in this project qualified, with evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance?

5. Plans for Administration and Management of Projects (15 Points)

Is there a plan to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

6. Budget (Not Scored)

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with stated objectives, the five-year strategy and goals of the President's Emergency Plan and Emergency Plan, and planned program activities?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the "V.1. Criteria" section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Tanzanian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

In addition, the following factors may affect the funding decision:

- Maintaining geographic diversity

V.3. Anticipated Announcement and Award Dates

October 30, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

The following additional requirements apply to this project:

- AR-4 HIV/AIDS Confidentiality Provisions.
- AR-6 Patient Care.
- AR-8 Public Health System Reporting Requirements.
- AR-12 Lobbying Restrictions.
- AR-14 Accounting System Requirements.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: <http://www.cdc.gov/od/pgo/funding/ARs.htm>.

You need to include an additional Certifications form from the PHS5161-1 application in the Grants.gov electronic submission only. Please refer to <http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.PDF>. Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
 - a. Current Budget Period Activities Objectives.
 - b. Current Budget Period Financial Progress.
 - c. New Budget Period Program Proposed Activity Objectives.
 - d. Budget.
 - e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Tanzania.
 - f. Additional Requested Information.
2. Annual progress report, due no later than 90 days after the end of the budget period.
3. Financial status report, due no later than 90 days after the end of the budget period.
4. Final financial and performance reports, due no later than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2700.

For program technical assistance, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521-2140. Telephone: 255 22 212 1407. Cell: 255 744 222986. Fax: 255 22 212 1462. E-mail: Cthreat@cdc.gov.

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770-488-2072. E-mail: dmf6@cdc.gov.

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: www.cdc.gov (click on "Funding" then "Grants and Cooperative Agreements"), and on the Web site of the HHS Office of Global Health Affairs, Internet address: www.globalhealth.gov.

Dated: August 31, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05-17679 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[ATSDR 213]

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for

fiscal year 2006 (October 1, 2005, through September 30, 2006).

FOR FURTHER INFORMATION CONTACT: David Forney, Chief, Vessel Sanitation Program, Division of Emergency and Environmental Health Services (EEHS), National Center for Environmental Health (NCEH), telephone (770) 488-7333 or e-mail DForney@cdc.gov.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1,

2005. The formula used to determine the fees is as follows:

$$\text{Average Cost Per Inspection} = \frac{\text{Total Cost of VSP}}{\text{Weight Number of Annual Inspection}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

Fees

The fee schedule (Appendix A) will be effective October 1, 2005, through September 30, 2006. The fee schedule,

which became effective October 1, 2001, will remain the same in Fiscal year 2006. If travel expenses continue to increase, the fees may be adjusted before September 30, 2006, since travel constitutes a sizable portion of VSP's costs. If an adjustment is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability

The fees will apply to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

Dated: August 30, 2005.

Kenneth Rose,

Acting Director, Centers for Disease Control and Prevention (CDC), NCEH/ATSDR Office of Policy, Planning, and Evaluation.

Appendix A

SIZE/COST FACTOR

| Vessel size | GRT ¹ | Average cost (\$U.S.) per GRT |
|-------------------|------------------|-------------------------------|
| Extra Small | > 3,001 | 0.25 |
| Small | 3,001–15,000 | 0.50 |
| Medium | 15,001–30,000 | 1.00 |
| Large | 30,001–60,000 | 1.50 |
| Extra Large | > 60,000 | 2.00 |

FEE SCHEDULE OCTOBER 1, 2005–SEPTEMBER 30, 2006

| Vessel size | GRT ¹ | Fee |
|-------------------|------------------|-------|
| Extra Small | > 3,001 | 1,150 |
| Small | 3,001–15,000 | 2,300 |
| Medium | 15,001–30,000 | 4,600 |
| Large | 30,001–60,000 | 6,900 |
| Extra Large | > 60,000 | 9,200 |

Inspections and reinspections involve the same procedure, require the same amount of time, and are therefore charged at the same rate.

[FR Doc. 05-17663 Filed 9-6-05; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

WERC: A Consortium for Environmental Education and Technology Development, Annual Environmental Design Contest; Availability of Sole Source Competing Continuation Cooperative Agreement; Request for Application: RFA-FDA-CFSAN-2005-3; Catalog of Federal Domestic Assistance Number 93.103

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA) is announcing its intent to accept and consider a single source competing

continuation application for the award of a cooperative agreement to the Waste-Management Education and Research Consortium (WERC): A Consortium for Environmental Education and Technology Development to support the Annual Environmental Design Contest. FDA anticipates providing \$106,000 (direct and indirect costs combined) in fiscal year 2005 in support of this research project. Subject to the availability of Federal funds and successful performance, 4 additional years of support up to \$106,000 (direct and indirect costs combined) per year will be available. FDA will support the research covered by this notice under the authority of section 301 of the Public Health Service Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements,

¹ Gross register tonnage in cubic feet, as shown in Lloyd's Register of Shipping.

FDA carefully considers the benefits such agreements will provide to the public. The cooperative agreement ensures FDA's continued participation and support in the Annual Environmental Design Contest. Through a mix of science and engineering, it creates new resources and stimulates new and timely solutions to real world environmental problems.

II. Eligibility Information

Competition is limited to WERC because it is a unique educational opportunity and is the only college level competition of its kind.

WERC, a Consortium for Environmental Education and Technology Development, a program of the College of Engineering at New Mexico State University, was established in 1990 under a cooperative agreement with the U.S. Department of Energy. Starting in 1991, WERC has conducted an Annual Environmental Design Contest which is a unique educational experience for students from throughout the world. The contest provides an opportunity for students to address real world environmental and food safety related problems, experience a team developed project, publish research papers, and network with experts and potential employers. The contest is open to any 2-year, 4-year, or graduate degree institution. A high school-level competition has been held concurrently with the university contest since 1997. Many of the tasks deal with waste disposal, ground water contamination, nuclear waste treatment, and similar subjects; however in 2001, a food safety track was added and the contest was broadened to include disciplines such as microbiology and chemical contaminants in foods. The FDA has supported this program since Fiscal Year 2000. This notice confirms FDA's intent to fund for another 5-year project period.

As of October 1, 2003, applicants are required to have a Dun and Bradstreet Number (DUNS) to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a 9-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, call 1-866-705-5711. You should identify yourself as a Federal grant applicant when you contact Dun and Bradstreet, Inc.

III. Application and Submission

For further information or a copy of the complete Request for Applications (RFA) contact Cynthia Polit, Grants Management Specialist, Division of

Contracts and Grants Management (HFA-500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7180, e-mail: cynthia.polit@fda.gov or cpolit@oc.fda.gov. This RFA can be viewed on Grants.gov under "Grant Find." A copy of the complete RFA can also be viewed on the FDA/CFSAN website at <http://www.cfsan.fda.gov/list.html>. For issues regarding the programmatic aspects of this notice: Wendy Buckler, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-1926, email: wendy.buckler@fda.gov.

Dated: September 1, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-17731 Filed 9-6-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001D-0044]

Draft Guidance for Industry and Food and Drug Administration Staff: Recommendations for Clinical Laboratory Improvement Amendments of 1988 Waiver Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications." FDA is issuing this draft guidance to recommend an approach for determining whether a laboratory test may be performed by laboratories with a certificate of waiver under CLIA. This draft guidance replaces the previous draft guidance entitled "Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver," March 1, 2001.

DATES: Submit written or electronic comments on this draft guidance by December 6, 2005. Submit written comments on the information collection provisions by November 7, 2005.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Recommendations for Clinical Laboratory Improvement Amendments of 1988 (CLIA) for Waiver Applications"

to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301-443-8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this draft guidance and the information collection provisions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Carol Benson, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240-276-0443, ext. 144.

SUPPLEMENTARY INFORMATION:

I. Background

CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services (the Secretary) before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263(b)).

Laboratories that perform only tests that are "simple" and that have an "insignificant risk of an erroneous result" may obtain a certificate of waiver (42 U.S.C. 263a(c)(2)). The Secretary has delegated to FDA the authority to determine under CLIA whether particular tests (waived tests) are "simple" and have "an insignificant risk of an erroneous result" (April 27, 2004, 69 FR 22849). This draft guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application).

FDA previously issued a draft guidance entitled "Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver" on March 1, 2001. This new draft guidance replaces the previous draft guidance.

The changes compared to the previous draft guidance include the following: (1) Greater emphasis on scientifically-based flex studies and validation studies, linked to the hazard analysis for each device; (2) recognition that reference methods may not be

available for every device type (although devices should be traceable to methods of known accuracy when true reference methods are available); (3) additional emphasis on use of quality control procedures; (4) greater emphasis on intended users during studies testing the device; and (5) updated study recommendations with emphasis on use of patient specimens, in an intended use environment, over time.

FDA bases the recommendations in this draft guidance on its interpretation of CLIA, FDA's experience with CLIA complexity determinations, and the agency's interactions with stakeholders. One of the interactions with stakeholders was at an open public workshop on August 14 and 15, 2000. In addition, a proposal presented by (Advanced Medical Technology Association) AdvaMed at the September 2003 Clinical Laboratory Improvement Advisory Committee (CLIAC) meeting, and recommendations proposed by CLIAC during the February 2004 meeting were considered in the development of this guidance.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance when finalized will represent the agency's current thinking on recommendations for CLIA Waiver Applications. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "Clinical Laboratory Improvement Amendments of 1988 (CLIA) Waiver Applications," you may either send a fax request to 301-443-8818 to receive a hard copy of the document, or send an e-mail request to gwa@cdrh.fda.gov to receive a hard copy or an electronic copy. Please use the document number (1171) to identify the guidance you are requesting.

Persons interested in obtaining a copy of the draft guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and

manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at <http://www.fda.gov/cdrh>. A search capability for all CDRH guidance documents is available at <http://www.fda.gov/cdrh/guidance.html>. Guidance documents are also available on the Division of Dockets Management Internet site at <http://www.fda.gov/ohrms/dockets>.

IV. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Recommendations for CLIA Waiver Applications

Description: Congress passed the CLIA (Public Law 100-578) in 1988 to establish quality standards for all laboratory testing. The purpose was to ensure the accuracy, reliability, and timeliness of patient test results regardless of where the test took place.

CLIA requires that clinical laboratories obtain a certificate from the Secretary of Health and Human Services before accepting materials derived from the human body for laboratory tests (42 U.S.C. 263a(b)). Laboratories that perform only tests that are "simple" and that have an "insignificant risk of an erroneous result" may obtain a certificate of waiver (42 U.S.C. 263a(c)(2)). The Secretary has delegated to FDA the authority to determine whether particular tests (waived tests) are "simple" and have "an insignificant risk of an erroneous result" under CLIA (69 FR 22849). This guidance document describes recommendations for device manufacturers submitting to FDA an application for determination that a cleared or approved device meets this CLIA standard (CLIA waiver application).

The guidance recommends that CLIA waiver applications include a description of the features of the device that make it "simple"; a report describing a hazard analysis that identifies potential sources of error, including a summary of the design and results of flex studies and conclusions drawn from the flex studies; a description of fail-safe and failure alert mechanisms and a description of the studies validating these mechanisms; a description of clinical tests that demonstrate the accuracy of the test in the hands of intended operators; and statistical analyses of clinical study results. The guidance also makes recommendations concerning labeling of waived tests. The burden associated with most of these labeling recommendations is approved under OMB control number 0910-0485. Only new information collections not already approved are included in the estimate below. The recommendation for quick reference instructions is a new information collection which FDA is submitting to OMB for review. Quick reference instructions are a short version of the instructions that are written in simple language and that can be posted. The guidance also notes that waived tests remain subject to applicable reporting and recordkeeping requirements under 21 CFR part 803. The burden associated with this provision is approved under OMB control number 0910-0437.

Respondents to this collection of information are manufacturers of in vitro diagnostic devices.

FDA estimates the burden of this collection as follows.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN¹

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per response | Total Hours | Operating and Maintenance Costs |
|--------------------|-------------------------------|------------------------|--------------------|-------------|---------------------------------|
| 40 | 1 | 40 | 780 | 31,200 | \$5,500 |

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN¹

| No. of Recordkeepers | Annual Frequency per Recordkeeping | Total Annual Records | Hours per Record | Total Hours | Operating and Maintenance Costs |
|----------------------|------------------------------------|----------------------|------------------|-------------|---------------------------------|
| 40 | 1 | 40 | 2,800 | 112,000 | \$60,700 |

¹There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on previous years' experience with CLIA waiver applications, FDA expects 40 manufacturers to apply for one CLIA waiver per year. The annual reporting burden to respondents is estimated to be 31,200 hours, and recordkeeping burdens for respondents is estimated to be 112,000 hours. FDA based the reporting and recordkeeping burden on an agency analysis of premarket submissions with clinical trials similar to the waived laboratory tests.

The total operating and maintenance cost associated with the implementation of this draft guidance is estimated to be \$66,200. The cost consists of specimen collection for the clinical study (estimated at \$23,500); laboratory supplies, reference testing and study oversight (estimated \$26,700); shipping and office supplies (estimated \$6,000); and educational materials, including quick reference instructions (\$10,000).

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 31, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-17732 Filed 9-1-05; 4:00 pm]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D-0334]

Draft Guidance for Industry on the Pediatric Research Equity Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "How to Comply with the Pediatric Research Equity Act." This draft guidance provides recommendations on how to interpret the requirements of the Pediatric Research Equity Act (PREA), which requires pediatric studies of certain drugs and biological products to ensure that those products that are likely to be commonly used in children or that represent a meaningful therapeutic benefit over existing treatments contain adequate pediatric labeling for approved indications.

DATES: Submit written or electronic comments on the draft guidance by November 7, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD-240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or to the Office of Communication, Training, and Manufacturers Assistance (HFM-40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance may also be obtained

by mail by calling CBER at 1-800-835-4709 or 301-827-1800. Submit written comments on the draft guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.fda.gov/dockets/ecomments>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Grace Carmouze, Center for Drug Evaluation and Research (HFD-950), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041, or Leonard Wilson, Center for Biologics Evaluation and Research (HFM-25), Food and Drug Administration, 1401 Rockville Pike, suite 200N Rockville, MD 20852-1448, 301-827-0373.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "How to Comply with the Pediatric Research Equity Act." On December 3, 2003, the Pediatric Research Equity Act was signed into law. PREA amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 505B (21 U.S.C. 355B). In PREA, Congress codified many of the elements of the Pediatric Rule, a final rule issued by FDA on December 2, 1998 (63 FR 66632), and suspended by court order on October 17, 2002. *Association of American Physicians, and Surgeons, Inc. v. FDA*, 226 F. Supp. 2d 204 (D.D.C. 2002). Specifically, PREA, in adding section 505B(a) of the act, requires all applications (or supplements to an application) submitted under section 505 of the act (21 U.S.C. 355) or section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) for a new active ingredient, new indication, new dosage form, new dosing regimen, or

new route of administration to contain a pediatric assessment unless the applicant has obtained a waiver or deferral. PREA also authorizes FDA, under section 505B(b) of the act, to require holders of previously approved applications for marketed drugs and biological products to conduct pediatric studies under certain circumstances, even if the holders are not seeking one of the changes listed under section 505B(a) of the act. This draft guidance only provides recommendations related to studies required under section 505B(a) of the act. This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on how to comply with PREA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry: How to Comply with the Pediatric Research Equity Act.

Description: The draft guidance provides recommendations to sponsors on how to interpret the requirements of PREA. PREA requires new drug applications (NDAs) and biologics licensing applications (BLAs) (or supplements to an applications) for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration to contain a pediatric assessment unless the applicant has obtained a waiver or deferral. Although PREA applies to both new applications (or supplements to an application) and currently marketed drugs and biological products for which a sponsor is not seeking one of the enumerated changes, the guidance only provides recommendations related to new applications or supplements to applications for drugs and biological products.

Description of Respondents: Sponsors of NDAs or BLAs for human drugs and biological products.

Burden Estimate: FDA is requesting public comments on estimates of annual submissions expected in 2005 (based on the number of submissions received in 2003 and 2004 unless otherwise

indicated) as required by the following PREA requirements described in the draft guidance:

Section 505B(a)(1) and (a)(2)—The draft guidance provides recommendations for submitting pediatric studies with applications (or supplements to an application) for a new active ingredient, new indication, new dosage form, new dosing regimen, or new route of administration under section 505 of the act or section 351 of the PHS Act. These assessments are required to contain data that are adequate to assess the safety and effectiveness of the drug product for the claimed indications in the relevant pediatric subpopulations and to support dosing and administration for each subpopulation for which the product is safe and effective. FDA estimates that 106 pediatric use assessments will be submitted from 78 applicants and it will take 50 hours to prepare each assessment.

Section 505B(a)(3)—The draft guidance makes recommendations on how to request a deferral of some or all assessments of safety and effectiveness required under PREA. FDA estimates that it will receive 160 requests to defer assessments from 54 applicants and it will take 24 hours to prepare each request.

Section 505B(a)(4)—The draft guidance provides recommendations on how to request a full or partial waiver of the pediatric study requirements. Based on its 2003 and 2004 experience, FDA anticipates that it will receive approximately 110 requests annually from approximately 80 applicants and estimates it will take approximately 8 hours to prepare each request.

Section 505B(e)—The draft guidance makes recommendations for applicants to meet at appropriate times with FDA to discuss plans and timelines for pediatric studies and any planned requests for deferral or waiver of pediatric studies. FDA estimates it will receive 160 submissions associated with meetings to discuss pediatric plans from 95 applicants at 16 hours per meeting submission.

FDA estimates that the collection of information resulting from this draft guidance is as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

| PREA Provision | Number of Respondents | Number of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|---|-----------------------|------------------------------------|------------------------|--------------------|-------------|
| 505B(a)(1) and (a)(2) Submission of pediatric assessments | 78 | 1.4 | 106 | 50 | 5,300 |

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN—Continued

| PREA Provision | Number of Respondents | Number of Responses per Respondent | Total Annual Responses | Hours per Response | Total Hours |
|-------------------------------------|-----------------------|------------------------------------|------------------------|--------------------|-------------|
| 505B(a)(3) Deferrals | 54 | 3.0 | 160 | 24 | 3,840 |
| 505B(a)(4) Full and partial waivers | 80 | 1.4 | 110 | 8 | 880 |
| 505B(e) Meetings | 95 | 1.7 | 160 | 16 | 2,560 |
| Total | | | | | 12,580 |

In addition, the draft guidance discusses when sponsors may need to report on the status of postmarketing study commitments as part of annual reports submitted under 21 CFR 314.81(b) and 21 CFR 601.70. The burdens associated with the annual reporting requirements were previously accounted for under OMB number 0910-0001 (expires 5/31/08) (for 21 CFR 314.81(b) and OMB number 0910-0433 (expires 3/31/07) (for 21 CFR 601.70). Furthermore, although labeling submissions are required under certain PREA provisions (e.g., section 505B(a)(4)(D) of the act), the draft guidance does not provide recommendations on these requirements and therefore FDA has not estimated associated burdens.

IV. Electronic Access

Persons with access to the Internet may obtain the document at <http://www.fda.gov/cder/guidance/index.htm>, <http://www.fda.gov/cber/guidelines.htm>, or <http://www.fda.gov/ohrms/dockets/default.htm>.

Dated: August 29, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05-17694 Filed 9-6-05; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 Drug Abuse.

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 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 Advisory Council on Drug Abuse.

Date: September 21, 2005.

Closed: 9 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: 1 p.m. to 4 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, (301) 433-2755.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address,

telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's Home page: <http://www.drugabuse.gov/NACDA/NACDAHome.html>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-17682 Filed 9-6-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Heart Study Applications (UO1s).

Date: September 13, 2005.

Time: 1:30 p.m. to 4 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: Valerie L. Prenger, PhD, Health Scientist Administrator, Review Branch, Room 7214, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892-7924, (301) 435-0270, prengerv@nhlbi.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. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 29, 2005.

Anthony M. Coelho, Jr.,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-17681 Filed 9-6-05; 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 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 Dental and Craniofacial Research 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 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 Dental and Craniofacial Research Council.

Date: September 23, 2005.

Open: 8:30 a.m. to 11:55 a.m.

Agenda: Director's Report, Implementation Plan Report, Concept Clearances.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Rm. 6C10, Bethesda, MD 20892.

Closed: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Rm. 6C10, Bethesda, MD 20892.

Contact Person: Norman S Braveman, PhD, Assistant to the Director, NIH-NIDCR, Building 31, Rm. 5B55, Bethesda, MD 20892, (301) 594-2089, Norman.Braveman@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.

Information is also available on the Institute's/Center's home page: <http://www.nidcr.nih.gov/about>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 29, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05-17680 Filed 9-6-05; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Waiver of Compliance With Navigation and Inspection Laws

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

Hurricane Katrina is one of the largest natural disasters to ever strike the United States. It has significantly disrupted production of oil and gas in the Gulf of Mexico, has caused many Gulf Coast oil refineries to go out of service because of flooding, lack of electric power or other reasons, and has significantly disrupted the pipeline transportation of oil and refined products from the Gulf Coast States.

These production losses, outages and disruptions have already caused large runups in the price of oil, gasoline and other refined products. The Department of Homeland Security is also now receiving reports of threatened or actual shortages of gasoline, jet fuel, and other refined products, and of the rationing of these fuels, both in the Southeast U.S. and in other locations throughout the country.

Numerous companies that produce and/or ship petroleum and/or refined petroleum products have submitted to the Department requests for waivers of the Merchant Marine Act of 1920 (the "Jones Act"). 46 U.S.C. App. section 1. This and related laws are generally referred to as the "coastwise laws." These laws provide, among other things, that only vessels built and owned by citizens of the United States and flagged in the United States can carry merchandise between U.S. ports.

The Secretary of Homeland Security is vested with the authority and discretion to waive the coastwise laws "to such extent and in such manner and upon such terms as he may prescribe, either upon his own initiative or upon the written recommendation of the head of any other Government agency, whenever he deems that such action is necessary in the interest of national defense." In consultation with and upon the recommendation of the Secretary of Energy, I have determined that such a waiver, in accordance with the terms set forth below, is in the interest of the national defense.

The catastrophic destruction brought about by Hurricane Katrina has dramatically impeded, and in some places in the affected region stopped altogether, production and transportation or transmission of oil, refined petroleum products, natural gas, and electricity. Much of the lost oil production is from producing areas in the Gulf of Mexico which have been leased pursuant to programs of the Department of the Interior. This lost production, refining and transportation capacity has resulted in the threatened rationing and unavailability of gasoline, jet fuel and other refined products, and threatens the Nation's economic and national security. I believe that waiver of the coastwise laws would facilitate the transportation of oil and refined petroleum products in and from portions of the United States devastated by the Hurricane, and to other regions affected by the disruptions that have occurred in the Gulf Coast area.

Therefore, I am exercising my discretion and authority to waive the coastwise laws generally for the transportation of petroleum and refined

petroleum products for the period until 12:01 a.m., September 19, 2005. In addition, I am exercising my discretion and authority to waive the coastwise laws generally for the transportation of petroleum released from the Strategic Petroleum Reserve, whether pursuant to an exchange, sale or otherwise, undertaken in response to the circumstances arising from Hurricane Katrina. I find, for the reasons set forth above, that such waivers are necessary in the interest of national defense.

Dated: September 1, 2005.

Michael Chertoff,

Secretary.

[FR Doc. 05-17829 Filed 9-2-05; 2:52 pm]

BILLING CODE 4410-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1602-DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-1602-DR), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: August 28, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2005, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from Hurricane Katrina beginning on August 24, 2005, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal. Federal funding for debris removal will remain at 75 percent. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

Broward and Miami-Dade Counties for assistance for debris removal and emergency protective measures, including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours excludes debris removal.

All counties within the State of Florida are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-17695 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-1602-DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA-1602-DR), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: August 30, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 28, 2005:

Monroe County for Public Assistance.

Broward and Miami-Dade Counties for Public Assistance [Categories C-G] (already designated for Public Assistance [Categories A and B], including direct Federal assistance. For a period of up to 72 hours, assistance for emergency protective measures, including direct Federal assistance, will be provided at 100 percent of the total eligible costs. The period of up to 72 hours at 100 percent excludes debris removal.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public

Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-17696 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3212-EM]

Louisiana; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Louisiana (FEMA-3212-EM), dated August 27, 2005, and related determinations.

EFFECTIVE DATE: August 27, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 27, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Louisiana, resulting from Hurricane Katrina beginning on August 26, 2005, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Louisiana.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect public health and safety, and property or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, including direct Federal assistance, at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under

Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William Lokey, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Louisiana to have been affected adversely by this declared emergency:

The parishes of Allen, Avoyelles, Beauregard, Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, De Soto, East Baton Rouge, East Carroll, East Feliciana, Evangeline, Franklin, Grant, Jackson, La Salle, Lincoln, Livingston, Madison, Morehouse, Natchitoches, Pointe Coupee, Ouachita, Rapides, Red River, Richland, Sabine, St. Helena, St. Landry, Tensas, Union, Vernon, Webster, West Carroll, West Feliciana, and Winn for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance, at 75 percent Federal funding.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-17697 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA-3212-EM]

Louisiana; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Louisiana (FEMA-3212-EM), dated August 27, 2005, and related determinations.

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of August 27, 2005:

The parishes of Acadia, Calcasieu, Cameron, Iberia, Iberville, Jefferson Davis, St. Martin, St. Mary, Vermilion, and West Baton Rouge for Public Assistance Category B (emergency protective measures), including direct Federal assistance.

The parishes of Ascension, Assumption, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John, St. Tammany, Tangipahoa, Terrebonne, and Washington for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-17698 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency**

[FEMA-3213-EM]

Mississippi; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Mississippi (FEMA-3213-EM), dated August 28, 2005, and related determinations.

EFFECTIVE DATE: August 28, 2005.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 28, 2005, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Mississippi, resulting from Hurricane Katrina beginning on August 27, 2005, and continuing, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5206 (Stafford Act). Therefore, I declare that such an emergency exists in the State of Mississippi.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect public health and safety, and property or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program, at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, William L. Carwile, III, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared emergency:

The counties of Covington, Forrest, Hancock, Harrison, Jackson, Jefferson Davis, Jones, Lamar, Marion, Pearl River, and Stone for Public Assistance Categories A and B (debris removal and emergency protective measures), including direct Federal assistance, at 75 percent Federal funding. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 05-17699 Filed 9-6-05; 8:45 am]

BILLING CODE 9110-10-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4975-N-29]

Notice of Proposed Information Collection: Comment Request; Single Family Premium Collection Subsystem-Periodic (SFPCS-P)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, 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. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 7, 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: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8001, Washington, DC 20410 or Wayne_Eddins@hud.gov.

FOR FURTHER INFORMATION CONTACT: Doretha S. Dabney, Branch Chief, Single Family Insurance Operations Branch, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708-1994, x3471 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting 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 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 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: Single Family Premium Collection Subsystem-Periodic (SFPCS-P).

OMB Control Number, if Applicable: 2502-0536.

Description of the Need for the Information and Proposed Use: The Single Family Premium Collection Subsystem-Periodic (SFPCS-P) allows the lenders to remit the Periodic Mortgage Insurance Premiums using funds obtained from the mortgagor during the collection of the monthly mortgage payment. The SFPCS-P strengthens HUD's ability to manage and process periodic single-family mortgage insurance premium collections and corrections to submitted data. It also improves data integrity for the Single Family Mortgage Insurance Program. Therefore, the FHA approved lenders use Automated Clearing House (ACH) application for all transmissions

with SFPCS-P. The authority for this collection of information is specified in 24 CFR 203.264 and 24 CFR 203.269. In general, the lenders use the ACH application to remit the periodic premium payments through SFPCS-P for the required FHA insured cases and to comply with the Credit Reform Act.

Agency Form Numbers, if Applicable: None.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Response, and Hours of Response: The number of hours needed to prepare the information collection is 5,670 annually; the estimated number of respondents is 3,150 annually; the frequency of response is monthly generating 37,800 responses annually; and the estimated time per response is 9 minutes. Since remittances are made through the ACH and/or EDI applications the periodic remittance is submitted electronically and there is no paperwork to complete and mail in.

Status of the Proposed Information Collection: This is an extension of a currently approved information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 29, 2005.

Frank L. Davis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 05-17730 Filed 9-6-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4971-N-42]

Notice of Submission of Proposed Information Collection to OMB; Loan Guarantees for Indian Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information collected determines if the Department will guarantee loans and mortgage insurance made by private lenders to Native American borrowers on restricted land.

DATES: *Comments Due Date:* October 7, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577-0200) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT:

Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; or Lillian Deitzer at Lillian_L_Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be

obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at <http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm>.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting 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: Loan Guarantees for Indian Housing.

OMB Approval Number: 2577-0200.

Form Numbers: HUD-53036 and HUD-53038.

Description of the Need for the Information and Its Proposed Use: Information collected determines if the Department will guarantee loans and mortgage insurance made by private lenders to Native American borrowers on restricted land.

Frequency of Submission: On Occasion.

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|-------------------------|-----------------------|---|------------------|---|--------------------|---|--------------|
| Reporting Burden: | 1,000 | | 2 | | 0.17 | | 334 |

Total Estimated Burden Hours: 334.

Status: Extension of a currently approval collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 25, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5-4845 Filed 9-6-05; 8:45 am]

BILLING CODE 4210-72-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4971-N-41]

Notice of Submission of Proposed Information Collection to OMB; Management Certifications and Management Entity Profile

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Owners of insured and assisted multifamily housing projects are required by HUD to submit certain data for review and approval of a new management agent.

DATES: *Comments Due Date:* October 7, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502-0305) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; or Lillian Deitzer at Lillian_L_Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at <http://>

hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting 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: Management Certifications and Management Entity Profile.

OMB Approval Number: 2502-0305.

Form Numbers: HUD-9832, HUD-98339-A, HUD-98339B, HUD-9839C.

Description of the Need for the Information and Its Proposed Use:

Owners of insured and assisted multifamily housing projects are required by HUD to submit certain data for review and approval of a new management agent.

Frequency of Submission: On Occasion.

| | Number of respondents | × | Annual responses | × | Hours per response | = | Burden hours |
|------------------------|-----------------------|---|------------------|---|--------------------|---|--------------|
| Reporting Burden | 8,200 | | 1 | | 0.43 | | 3,550 |

Total Estimated Burden Hours: 3,550.
Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 25, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E5-4846 Filed 9-6-05; 8:45 am]

BILLING CODE 4210-72-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4917-N-05]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration (FHA) under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month

period beginning July 1, 2005, is 4⁷/₈ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2005, is 4¹/₂ percent. However, as a result of a recent amendment to section 224 of the Act, if an insurance claim relating to a mortgage insured under sections 203 or 234 of the Act and endorsed for insurance after January 23, 2004, is paid in cash, the debenture interest rate for purposes of calculating a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years.

FOR FURTHER INFORMATION CONTACT: L. Richard Keyser, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 2232, Washington, DC 20410-8000; telephone 202-755-7500 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free

Federal Information Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the

statutory maximum interest rate for the period beginning July 1, 2005, is 4½ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 4½ percent for the 6-month period beginning July 1, 2005. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) with insurance commitment or endorsement date (as applicable) within the latter 6 months of 2005.

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

| Effective interest rate | On or after | Prior to |
|-------------------------|--------------|---------------|
| 9½ | Jan. 1, 1980 | July 1, 1980. |
| 9⅞ | July 1, 1980 | Jan. 1, 1981. |
| 11¼ | Jan. 1, 1981 | July 1, 1981. |
| 12⅞ | July 1, 1981 | Jan. 1, 1982. |
| 12¾ | Jan. 1, 1982 | Jan. 1, 1983. |
| 10¼ | Jan. 1, 1983 | July 1, 1983. |
| 10⅞ | July 1, 1983 | Jan. 1, 1984. |
| 11½ | Jan. 1, 1984 | July 1, 1984. |
| 13⅞ | July 1, 1984 | Jan. 1, 1985. |
| 11⅞ | Jan. 1, 1985 | July 1, 1985. |
| 11½ | July 1, 1985 | Jan. 1, 1986. |
| 10¼ | Jan. 1, 1986 | July 1, 1986. |
| 8¼ | July 1, 1986 | Jan. 1, 1987. |
| 8 | Jan. 1, 1987 | July 1, 1987. |
| 9 | July 1, 1987 | Jan. 1, 1988. |
| 9⅞ | Jan. 1, 1988 | July 1, 1988. |
| 9⅞ | July 1, 1988 | Jan. 1, 1989. |
| 9¼ | Jan. 1, 1989 | July 1, 1989. |
| 9 | July 1, 1989 | Jan. 1, 1990. |
| 8⅞ | Jan. 1, 1990 | July 1, 1990. |
| 9 | July 1, 1990 | Jan. 1, 1991. |
| 8¾ | Jan. 1, 1991 | July 1, 1991. |
| 8½ | July 1, 1991 | Jan. 1, 1992. |
| 8 | Jan. 1, 1992 | July 1, 1992. |
| 8 | July 1, 1992 | Jan. 1, 1993. |
| 7¾ | Jan. 1, 1993 | July 1, 1993. |
| 7 | July 1, 1993 | Jan. 1, 1994. |
| 6⅞ | Jan. 1, 1994 | July 1, 1994. |
| 7¾ | July 1, 1994 | Jan. 1, 1995. |
| 8⅞ | Jan. 1, 1995 | July 1, 1995. |
| 7¼ | July 1, 1995 | Jan. 1, 1996. |
| 6½ | Jan. 1, 1996 | July 1, 1996. |
| 7¼ | July 1, 1996 | Jan. 1, 1997. |
| 6¾ | Jan. 1, 1997 | July 1, 1997. |
| 7⅞ | July 1, 1997 | Jan. 1, 1998. |
| 6⅞ | Jan. 1, 1998 | July 1, 1998. |
| 6⅞ | July 1, 1998 | Jan. 1, 1999. |
| 5½ | Jan. 1, 1999 | July 1, 1999. |
| 6⅞ | July 1, 1999 | Jan. 1, 2000. |
| 6½ | Jan. 1, 2000 | July 1, 2000. |
| 6½ | July 1, 2000 | Jan. 1, 2001. |
| 6 | Jan. 1, 2001 | July 1, 2001. |
| 5⅞ | July 1, 2001 | Jan. 1, 2002. |
| 5¼ | Jan. 1, 2002 | July 1, 2002. |
| 5¾ | July 1, 2002 | Jan. 1, 2003. |
| 5 | Jan. 1, 2003 | July 1, 2003. |
| 4½ | July 1, 2003 | Jan. 1, 2004. |
| 5⅞ | Jan. 1, 2004 | July 1, 2004. |
| 5½ | July 1, 2004 | Jan. 1, 2005. |
| 4⅞ | Jan. 1, 2005 | July 1, 2005. |

| Effective interest rate | On or after | Prior to |
|-------------------------|--------------|---------------|
| 4½ | July 1, 2005 | Jan. 1, 2006. |

Section 215 of Title II of Division G of the Consolidated Appropriations Act, 2004 (Pub. L. 108-199, approved January 23, 2004) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, effective immediately, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H-15. The FHA is in the process of making conforming amendments to applicable regulations to fully implement this recent change to section 224 of the Act.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the “going Federal rate” in effect at the time the debentures are issued. The term “going Federal rate” is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning July 1, 2005, is 4⅞ percent.

HUD expects to publish its next notice of change in debenture interest rates in January 2006.

The subject matter of this notice falls within the categorical exemption from HUD’s environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d)).

Dated: August 26, 2005.

Brian D. Montgomery,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 05-17729 Filed 9-6-05; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit Associated With the Restoration of Habitat and Reintroduction of Utah Prairie Dogs on Private Land in Sevier County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Mr. Mitchel Pace (Applicant/Cooperator) has applied to the Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (ESP) for the Utah prairie dog pursuant to section 10(a)1(A) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). This permit application includes a proposed Safe Harbor Agreement (SHA) between the Applicant and the Service. The proposed SHA and permit would become effective upon signature of the SHA and would remain in effect for 25 years. This notice is provided pursuant to the National Environmental Policy Act (NEPA), section 10 of the Act, and the Service’s Safe Harbor Policy (64 FR 32717). The Service requests information, views, and opinions from the public via this notice. Further, the Service is soliciting information regarding the adequacy of the SHA as measured against the Service’s Safe Harbor Policy and the regulations that implement it.

DATES: Written comments on the permit application must be received on or before October 7, 2005.

ADDRESSES: Persons wishing to review the proposed SHA and the permit application may obtain copies by writing the Service’s Mountain-Prairie Regional Office, Denver, Colorado. Documents also will be available for public inspection during normal business hours at the Regional Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, Lakewood, Colorado 80228-1807, or the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, West Valley City, Utah 84119. Written data or comments concerning the proposed SHA and/or permit application must be submitted to the Regional Office and must be in

writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE-106063 in your comments, or in the request for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Pat Mehlhop, Regional Safe Harbor Coordinator (see **ADDRESSES**), telephone (303) 236-4215, or Henry Maddux, Utah Field Supervisor (see **ADDRESSES**), telephone (801) 975-3330.

SUPPLEMENTARY INFORMATION: The Utah prairie dog is the westernmost member of the genus *Cynomys*. The species' range, which is limited to the southwestern quarter of Utah, is the most restricted of all prairie dog species in the United States. Distribution of the Utah prairie dog has been greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration. Protection of this species and enhancement of its habitat on private land will benefit recovery efforts.

The primary objective of this proposed SHA is to implement voluntary conservation measures to benefit the species and the landowner. Through this agreement, the landowner will receive relief from any section 9 liability under the Act beyond that which exists at the time the agreement is signed ("regulatory baseline"). The private land immediately to the south of the property contains an active Utah prairie dog colony approximately 2 hectares (5 acres) in size. This colony abuts the fence line, but does not extend onto the property to be addressed in the proposed SHA due to unsuitable habitat. To benefit the Utah prairie dog, foraging and visual surveillance habitat will be enhanced by thinning decadent stands of brush and by increasing forage quantity and quality using mechanical and herbicidal treatments and reseeding native grasses and forbs. The habitat improvements will be maintained throughout the term of the permit through managed grazing, additional brush treatments if necessary, and to some degree by the Utah prairie dogs themselves. The Cooperator will receive an ESP that authorizes incidental take of the covered species above the Cooperator's baseline responsibilities, as defined in the SHA.

The Service has evaluated the impacts of this action under the NEPA and determined that it warrants categorical exclusion as described 516 DM 6, Appendix 1, section 1.4 C.(1). The Service will evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an

intra-Service section 7 consultation on the issuance of the permit. The result of the biological opinion, in combination with the above finding and any public comments will be used in the final analysis to determine whether or not to issue the requested ESP, pursuant to the regulations that guide issuance of the type of permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: July 26, 2005.

Elliott N. Sutta,

Regional Director, Denver, Colorado.

[FR Doc. 05-17668 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Four Applications for Incidental Take Permits for Construction of Single-Family Homes in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Eugene T. Butler, Carlos E. Gauthier, Robert Moren, and Kheino A. Phidd (Applicants) individually request an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicants anticipate taking a combined total of about 1.03 acres of Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) foraging, sheltering, and possibly nesting habitat incidental to lot preparation for the construction of single-family homes and supporting infrastructure in Brevard County, Florida (Projects). Requested permit duration is one year for all applicants, except for Moren, who requests a 10-year permit term. The destruction of 1.03 acre of foraging, sheltering, and possibly nesting habitat is expected to result in the take of three families of scrub-jays.

Each of the Applicants' Habitat Conservation Plans (HCPs) describe the mitigation and minimization measures proposed to address the effects of the proposed Project to the Florida scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We have determined that each Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible

effect on the species covered in the HCPs. Therefore, the ITPs are "low-effect" projects and qualify as categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). We announce the availability of the HCPs for the incidental take applications. Copies of the HCPs may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the ITP applications and HCPs should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 7, 2005.

ADDRESSES: Persons wishing to review the applications and HCPs may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE099682-0, for Butler, number TE099683-0, for Gauthier, number TE099684-0, for Moren, and number TE099685-0, for Phidd, in such requests. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Ms. Paula Sisson, General Biologist, Jacksonville Field Office, Jacksonville, Florida (see **ADDRESSES** above), telephone: 904/232-2580, ext. 126.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE099682-0, for Butler, number TE099683-0, for Gauthier, number TE099684-0, for Moren, and number TE099685-0, for Phidd, in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to http://www.david_dell@fws.gov. Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your

internet message, contact us directly at either telephone number listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (predominately in oak-dominated scrub). Increasing urban and agricultural development have resulted in habitat loss and fragmentation which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in east central Florida has been exacerbated by tremendous urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils which previously supported scrub-jay habitat. Based on existing soils data, much of the historic and current scrub-jay habitat of coastal east-central Florida occurs proximal to the current shoreline and larger river basins. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded due to the exclusion of fire which is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Proposed residential construction for Eugene T. Butler would take place

within Section 5, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 48, Block 337. Proposed residential construction for Carlos E. Gauthier would take place within Section 16, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 21, Block 790. Proposed residential construction for Robert Moren would take place within Section 5, Township 29 South, Range 37 East, Palm Bay, Florida on Lot 15, Block 341. Proposed residential construction for Kheino A. Phidd would take place within Section 8, Township 29 South, Range 37 East, Palm Bay, Brevard County, Florida on Lot 13, Block 434. Each of these lots is within 438 feet of locations where scrub-jays were sighted during surveys for this species from 1999–2003.

Scrub-jays using the subject residential lots and adjacent properties are part of a larger complex of scrub-jays located in a matrix of urban and natural settings in areas of southern Brevard and northern Indian River counties. Within the City of Palm Bay, 20 families of scrub-jays persist in habitat fragmented by residential development. Scrub-jays in urban areas are particularly vulnerable and typically do not successfully produce young that survive to adulthood. Persistent urban growth in this area will likely result in further reductions in the amount of suitable habitat for scrub-jays. Increasing urban pressures are also likely to result in the continued degradation of scrub-jay habitat as fire suppression slowly results in vegetative overgrowth. Thus, over the long-term, scrub-jays within the City of Palm Bay are unlikely to persist, and conservation efforts for this species should target acquisition and management of large parcels of land outside the direct influence of urbanization.

The subject residential parcels lie within a "high density" urban setting, and the corresponding territory size of the resident scrub-jays has been estimated to range from 5.2 to 10.8 acres based on average territory sizes of scrub-jay in other urban areas. Data collected from 12 scrub-jay families within the city limits of Palm Bay during the 2000 and 2001 nesting seasons provided information about survival and reproductive success of scrub-jays, but did not attempt to estimate territory sizes. This information indicated that territory boundaries tended to shift from year to year, making calculations of territory size difficult. Similarly, point data do not reliably indicate occupied habitat over time since birds in urban settings tend to move within and between years. Thus, using known

territory boundaries and point data to delineate occupied habitat likely underestimates areas occupied by scrub-jays.

To assess whether the Applicants' parcels were within occupied scrub-jay habitat, we calculated the maximum average "shift" in territories locations between 2000 and 2001. Based on these estimates, we calculated a maximum average shift of 438 feet between years. We subsequently used the 438 feet as a buffer to surround known territory boundaries and point locations for scrub-jays. We reasoned that 438 feet represented a biologically-based buffer, within which scrub-jays were likely to occur. Application of the 438-foot buffer to known territories and point locations provides a quantitative method to delineate occupied scrub-jay habitat in highly urbanized areas within the city limits of Palm Bay.

The four Applicants' residential lots fall within the 438-foot buffer established for known scrub-jay territories and/or point data. The Applicants' properties provide habitat for foraging, sheltering, and possibly nesting. Accordingly, loss of this habitat due to residential construction will result in the destruction of scrub-jay habitat.

The Applicants agree to avoid construction during the nesting season if active nests are found onsite, but no other on-site minimization measures are proposed to reduce take of scrub-jays. The lots combined encompass about 1.03 acres and the footprint of the homes, infrastructure, and landscaping preclude retention of scrub-jay habitat. On-site minimization is not expected to be a biologically viable alternative due to increasing negative demographic effects caused by urbanization.

In combination, the Applicants propose to mitigate for the loss of 1.03 acres of scrub-jay habitat by contributing a total of \$11,187 (\$2,785 for Butler, \$2,440 for Gauthier, \$3,290 for Moren, and \$2,672 for Phidd) to the Florida Scrub-jay Conservation Fund administered by the National Fish and Wildlife Foundation. Funds in this account are ear-marked for use in the conservation and recovery of scrub-jays and may include habitat acquisition, restoration, and/or management. The \$11,187 is sufficient to acquire and perpetually manage about 2.06 acres of suitable occupied scrub-jay habitat based on a replacement ratio of two mitigation acres per one impact acre. The cost is based on previous acquisitions of mitigation lands in southern Brevard County at an average \$5,700 per acre, plus a \$1,000 per acre management endowment necessary to

ensure future management of acquired scrub-jay habitat.

We have determined that the HCPs are low-effect plans that are categorically excluded from further NEPA analysis, and do not require the preparation of an EA or EIS. This preliminary information may be revised due to public comment received in response to this notice. Low-effect HCPs are those involving: (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources. Each of the Applicants' HCPs qualifies for the following reasons:

1. Approval of the HCP would result in minor or negligible effects on the Florida scrub-jay population as a whole. We do not anticipate significant direct or cumulative effects to the Florida scrub-jay population as a result of the construction projects.

2. Approval of the HCP would not have adverse effects on known unique geographic, historic or cultural sites, or involve unique or unknown environmental risks.

3. Approval of the HCP would not result in any significant adverse effects on public health or safety.

4. The project does not require compliance with Executive Order 11988 (Floodplain Management), Executive Order 11990 (Protection of Wetlands), or the Fish and Wildlife Coordination Act, nor does it threaten to violate a Federal, State, local or tribal law or requirement imposed for the protection of the environment.

5. Approval of the Plan would not establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

We have determined that issuance of each of these incidental take permits qualify as a categorical exclusion under the NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). Therefore, no further NEPA documentation will be prepared.

We will evaluate the HCPs and comments submitted thereon to determine whether the applications meet the requirements of section 10(a) of the Act. If it is determined that those requirements are met, the ITPs will be issued for the incidental take of the Florida scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITPs comply with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to

determine whether or not to issue the ITPs.

Dated: August 4, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05-17676 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Beach Driving and Related Activities in St. Johns County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: St. Johns County (Applicant) is seeking an incidental take permit (ITP) from the Fish and Wildlife Service (Service) pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The Applicant anticipates that authorization of beach driving and related activities, over a requested permit term of 20 years, will result in the incidental taking of the endangered Anastasia Island beach mouse (*Peromyscus polionotus phasma*), leatherback sea turtle (*Dermochelys coriacea*), green sea turtle (*Chelonia mydas*), Kemp's ridley sea turtle (*Lepidochelys kempfi*), and hawksbill sea turtle (*Eretmochelys imbricata*), as well as the threatened loggerhead sea turtle (*Caretta caretta*). The anticipated taking of these federally listed species is incidental to otherwise legal vehicle operation on the beaches of St. Johns County, pursuant to the Beach and Shore Preservation Act of 1998, section 161.36, Florida Statutes.

A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the beach access and beach access-related activities on federally listed species is described further in the **SUPPLEMENTARY INFORMATION** section below. The Service has made a preliminary determination that the issuance of the Permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the Environmental Assessment (EA) and HCP. Copies of the HCP and EA may be obtained by making a request to the

Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This Notice is provided pursuant to section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, supporting documentation, EA and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before November 7, 2005.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Please reference permit number TE091980-0 in such requests.

Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216-0912.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679-7110; or Mr. Michael Jennings, Fish and Wildlife Biologist, Jacksonville Field Office, (see **ADDRESSES** above), telephone: 904/232-2580, extension 113.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit number TE091980-0 in such comments. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the Internet to david_dell@fws.gov. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either of the telephone numbers listed below (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either of the Service offices listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be

other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Anastasia Island beach mice are restricted to 14 linear miles along the Atlantic Ocean coast of Anastasia Island, St. Johns County, Florida. They are found primarily at the southern (Fort Matanzas National Monument) and northern (Anastasia State Recreation Area) ends of the island, although low densities of beach mice probably remain along the entire length of the island where residential construction has reduced and fragmented coastal dunes. Physically, Anastasia Island beach mice are relatively large compared to other subspecies of beach mice. However, like most other subspecies, they prefer primary and secondary dune habitats composed of a variety of dune-colonizing vegetation. Beach mice typically live in burrows constructed in coastal sand dunes. They eat a variety of seeds, but appear to prefer sea oats (*Uniola paniculata*) and dune panic grass (*Panicum amarum*) along with small invertebrates.

Three species of sea turtles nest on the beaches of St. Johns County. On average 268 loggerhead, eight green, and one leatherback sea turtles annually nest along St. Johns County's 42 miles of coastline. Neither hawksbill or Kemp's ridley turtles have been documented to nest in St. Johns County.

While the mechanism remains largely unknown, nesting sea turtles return to their natal beaches when they are reproductively mature. Once a gravid female reaches her selected nesting beach, she hauls herself from the sea, crawls to an area above the mean high water line (in St. Johns County this is usually at the toe of the primary dune), excavates an egg chamber, deposits 80 to 135 eggs (the number depends on the species), covers the egg chamber, and returns to the sea. This process typically takes about one and a half hours and, except for the Kemp's ridley, usually occurs at night. Loggerhead turtles nest from late April to mid September, green turtles from late May to mid September, and leatherback turtles from late February to July. Artificial lights, obstructions (e.g., groins, escarpments, beach furniture, and armoring

structures), night-time human activity on nesting beaches, and predation are known or suspected to deter turtles from nesting.

Sea turtle eggs incubate within the warm, moist egg chamber for 50 to 75 days (depending on the species). Incubating eggs are vulnerable to crushing, drowning, or washout. Along St. Johns County's coastline, trampling by humans and vehicles can crush sea turtle nests. Sea turtle eggs can withstand occasional inundation associated with spring tides, but repeated or long-duration inundation typically associated with storm events can drown eggs. During storm events, sea turtle nests are often washed out. Nests deposited between an armoring structure and the sea are more vulnerable to washout.

After hatching, young sea turtles dig upward to the beach surface and immediately crawl toward the sea. Hatchling emergence typically occurs at night. Factors affecting the survival of hatchling sea turtles include compaction of sand on top of the egg chamber, predation, and disorientation due to artificial lighting. Pedestrian traffic and heavy equipment use may cause compaction of sand and create an impenetrable substrate for hatchling turtles that ultimately results in their death. Following successful emergence at the beach surface, hatchlings are vulnerable to terrestrial and aerial predators. Raccoons, domestic cats, ghost crabs, and a variety of sea birds often take hatchling sea turtles. Because hatchling sea turtles orient to ambient light reflected by the sea surface, artificial light sources can interfere with the ability of hatchlings to correctly orient towards the sea. Often, disoriented hatchlings are attracted towards the source of the artificial light and away from the sea. Disoriented hatchlings typically die from desiccation, predation, or exhaustion.

The Applicant authorizes beach driving for a variety of purposes, all of which are otherwise legal activities. Local public safety and/or operations staff, law enforcement and emergency response vehicles may operate on about 41.1 linear miles of beach within St. Johns County, but the amount of vehicle traffic on county beaches resulting from these entities is relatively small compared with recreational traffic resulting from use by the general public. Vehicle traffic from the general public is limited to about 16.3 linear miles of beach.

Authorized beach driving and beach driving-related activities may result in the incidental taking of the Anastasia Island beach mouse and the species of

sea turtles described above. The Applicant anticipates harm or harassment of species covered by the HCP due to the following beach driving and beach driving related activities: (1) Public safety operations, such as those that are provided by lifeguards, emergency vehicles, and law enforcement vehicles; (2) public vehicular access; (3) routine beach maintenance and sanitation; (4) access ramp maintenance; (5) actions necessary to implement the terms and conditions of the ITP; (6) planned coastal construction projects properly permitted by local, State, and/or Federal regulatory agencies, such as seawall repairs, beach nourishment, dune restoration, and removal of windblown sand, where no reasonable upland alternative exists; (7) scientific monitoring and studies not covered under the original ITP; (8) emergency shoreline protection projects properly permitted by local, State, and/or Federal regulatory agencies; and (9) non-routine beach maintenance and sanitation, such as removal of hazardous materials, removal of storm-generated debris and/or obstacles that pose a public health or safety risk and other atypical circumstances requiring beach access (e.g., boat groundings, downed aircraft, etc.).

To minimize and mitigate the anticipated incidental take of species covered by the HCP, the Applicant proposes to implement a number of protective measures that will spatially and temporally reduce interactions between vehicles and sea turtles and their nests. The following actions are proposed by the Applicant: (1) Limit most public vehicle access to the beach from 8:00 a.m. to 8:00 p.m. daily from May 1 through October 31; (2) develop and implement a rut removal program; (3) develop and implement a public awareness program; (4) elevate trash receptacles; (5) expand existing no-driving conservation zones; (6) reduce public access along portions of the beach; (7) develop and implement a consistent county-wide beach lighting management program; (8) develop and implement a beach horseback riding registration and education program; (9) undertake dune restoration programs; (10) monitor and mark sea turtle nests within the area covered by the HCP; and (11) increase local law enforcement staff to enforce existing ordinances and the terms of the incidental take permit.

The Service has made a preliminary determination that issuance of the requested ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA.

This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the issuance criteria requirements of section 10(a)(1)(B) of the Act. By conducting an intra-Service section 7 consultation the Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP would comply with section 7 of the Act. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP for the five species of sea turtle and the Anastasia Island beach mouse.

Dated: August 6, 2005.

Cynthia K. Dohner,

Acting Regional Director, Southeast Region.

[FR Doc. 05-17677 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-025-1232-NX-NV06; Special Recreation Permit #NV-025-04-02]

Notice to the Public of Temporary Public Lands Closures and Prohibition of Certain Activities on Public Lands Administered by the Bureau of Land Management, Winnemucca Field Office, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure.

SUMMARY: Notice is hereby given that certain lands located in northwestern Nevada partly within the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area will be temporarily closed or restricted and certain activities will be temporarily prohibited in and around the Burning Man event site administered by the BLM Winnemucca Field Office in Pershing and Washoe Counties, Nevada.

The specified closures, restrictions and prohibitions are made in the interest of public safety at and around the public lands location of an event known as the Burning Man Festival. This event is authorized on public lands under a special recreation permit and is expected to attract approximately 35,000 participants this year.

These lands will be closed or restricted as follows:

- August 15, 2005 through September 19, 2005 inclusive: Discharge of

firearms, possession of weapons, waste water disposal, and closed or restricted to camping.

- August 26, 2005 through September 5, 2005 inclusive: Aircraft landing, possession of fireworks, possession of alcohol by minors, and closed to all public uses.

- August 29, 2005 through September 5, 2005 inclusive: Closed or restricted to vehicle use.

Public camping and vehicle use that creates dust plumes higher than the top of the vehicle are prohibited from August 29, 2005 through September 5, 2005 inclusive in the following legally described locations outside the permit area (defined by a temporary event perimeter fence):

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,

Sec. 1, W¹/₂;

Secs. 2, 3 and 4;

Secs. 9, 10 and 11;

Sec. 12, W¹/₂;

Sec. 13, NW¹/₄;

Sec. 14, N¹/₂;

Sec. 15, N¹/₂;

Sec. 16, N¹/₂.

Unsurveyed T. 33¹/₂ N., R. 24 E.,

Secs. 33, 34 and 35;

Sec. 36, W¹/₂.

Burning Man event ticket holders who are camped in designated areas provided by Black Rock City LLC (limited liability company) and ticket holders who are camped in the authorized "pilot camp" and BLM-authorized event management-related camps are exempt from the camping closure.

Public camping is prohibited from August 15, 2005 through August 28, 2005 inclusive and from September 6, 2005 through September 19, 2005 inclusive in the following legally described locations inside the permit area (defined by a temporary event perimeter fence), within 50 yards outside the perimeter fence boundary, and within the airport/airstrip area located contiguous with and south of the perimeter fence boundary:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,

Secs. 2, 3 and 4;

Secs. 9, 10 and 11.

Unsurveyed T. 33¹/₂ N., R. 24 E.,

Secs. 33, 34 and 35.

These areas described above are closed two weeks preceding and following the Burning Man event. Black Rock City LLC authorized staff, contractors, volunteers, and participants constructing or taking down art exhibits and theme camps are exempt from the camping closure.

Operation of motorized vehicles is prohibited from August 29, 2005 through September 5, 2005 inclusive in the following legally described locations inside the permit area (defined by a temporary event perimeter fence) and within 50 yards outside the perimeter fence boundary:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,

Secs. 2, 3, 4, 9, 10, and 11;

Unsurveyed T. 33¹/₂ N., R. 24 E.,

Secs. 33, 34 and 35.

The following exceptions apply: The main playa road that provides access between the 3-Mile and Trego playa entrances; participant arrival and departure on designated routes; mutant vehicles registered with Burning Man; Black Rock City LLC staff and support; BLM, medical, law enforcement, and firefighting vehicles; and motorized skateboards or "Go Peds" with or without handlebars. Mutant vehicles must be registered with Burning Man/Black Rock City LLC and drivers must provide evidence of registration at all times.

For event safety near the entrance road and airstrip, the following legally described locations outside the permit area (defined by a temporary event perimeter fence) are closed to all public use from August 29, 2005 through September 5, 2005 inclusive:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,

Sec. 4, NE¹/₄, S¹/₂;

Sec. 5, SE¹/₄;

Sec. 8, NE¹/₄, S¹/₂;

Sec. 9;

Sec. 10;

Sec. 15, N¹/₂;

Sec. 16, N¹/₂.

Unsurveyed T. 33¹/₂ N., R. 24 E.,

Sec. 33, SE¹/₄;

Sec. 34, SW¹/₄.

The following exceptions apply: The main playa road that provides access between the 3-Mile and Trego playa entrances; participant arrival and departure on designated routes; aircraft operations conducted through the authorized event landing strip and such ultralight and helicopter take-off and landing areas for Burning Man staff and participants, law enforcement, and emergency medical services as may be included in the annual operation plan submitted by Black Rock City, LLC and approved by the authorized officer; and uses performed by BLM personnel as designated by the authorized BLM officer.

The use, sale or possession of personal fireworks within the Burning

Man event perimeter fence is prohibited in the following legally described locations from August 29, 2005 through September 5, 2005 inclusive.

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
Secs. 2, 3, 4, 9, 10, and 11.
Unsurveyed T. 33½ N., R. 24 E.,
Secs. 33, 34 and 35.

The following exceptions apply: Uses of fireworks approved by Black Rock City LLC and used as part of an official Burning Man art burn event.

Possession of weapons is prohibited in the following legally described locations inside the temporary event perimeter fence from August 15, 2005 through September 19, 2005 inclusive:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
Secs. 2, 3, 4, 9, 10, and 11.
Unsurveyed T. 33½ N., R. 24 E.,
Secs. 33, 34 and 35.

The following exceptions apply: County, state, and federal certified law enforcement personnel under the color of law.

Note: "Weapon" means a firearm, compressed gas or spring powered pistol or rifle, bow and arrow, cross bow, blowgun, speargun, hand thrown spear, sling shot, irritant gas device, explosive device or any other implement designed to discharge missiles, and includes any weapon the possession of which is prohibited by state law.

Discharge of firearms is prohibited in the following legally described locations from August 15, 2005, through September 19, 2005:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
Secs. 1, 2, 3, 4, and 5;
Sec. 6, E½;
Secs. 8, 9, 10, 11, and 12;
Sec. 13, N½, SW¼;
Sec. 14, 15, and 16;
Sec. 17, E½, NW¼;
Sec. 21, NE¼;
Sec. 22, N½;
Sec. 23, NW¼.

Unsurveyed T. 33 N., R. 25 E.,
Sec. 4;

Sec. 9, W½, NW¼NE¼.

Unsurveyed T. 33½ N., R. 24 E.,
Secs. 25, 26, 27, 28, 29, 32, 33, 34, 35,
and 36;

Unsurveyed T. 34 N., R. 24 E.,
Sec. 33, NE¼, S½;
Secs. 34 and 35;
Sec. 36, S½.

Unsurveyed T. 34 N., R. 25 E.,
Sec. 33.

The following exceptions apply: Law enforcement officers under color of law.

Aircraft are prohibited from landing, taking off, or taxiing in the following legally described locations from August 26, 2005 through September 5, 2005 inclusive:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
Secs. 1, 2, 3, 4, and 5;
Sec. 6, E½;
Secs. 8, 9, 10, 11, and 12;
Sec. 13, N½, SW¼;
Sec. 14, 15, and 16;
Sec. 17, E½, NW¼;
Sec. 21, NE¼;
Sec. 22, N½;
Sec. 23, NW¼.

Unsurveyed T. 33 N., R. 25 E.,
Sec. 4;

Sec. 9, W½, NW¼NE¼.

Unsurveyed T. 33½ N., R. 24 E.,
Secs. 25, 26, 27, 28, 29, 32, 33, 34, 35,
and 36;

Unsurveyed T. 34 N., R. 24 E.,
Sec. 33, NE¼, S½;
Secs. 34 and 35;
Sec. 36, S½.

Unsurveyed T. 34 N., R. 25 E.,
Sec. 33.

The following exceptions apply: Aircraft operations conducted through the authorized event landing strip and such ultralight and helicopter take-off and landing areas for Burning Man staff and participants, law enforcement, and emergency medical services as may be included in the annual operation plan submitted by Black Rock City, LLC and approved by the authorized officer; and Emergency aircraft such as Care Flight, Sheriff's Office, or Medical Ambulance Transport System helicopters engaged in official business may land in other locations when circumstances require it.

Note: The authorized event airstrip is the only location where Burning Man staff and participant aircraft may land or take off.

Possession of alcohol by minors is prohibited in the following legally described locations within and surrounding the event perimeter fence from August 29, 2005 through September 5, 2005 inclusive:

Mount Diablo Meridian

Unsurveyed T. 33 N., R. 24 E.,
Secs. 1, 2, 3, 4, and 5;
Sec. 6, E½;
Secs. 8, 9, 10, 11, and 12;
Sec. 13, N½, SW¼;
Sec. 14, 15 and 16;
Sec. 17, E½, NW¼;
Sec. 21, NE¼;
Sec. 22, N½;
Sec. 23, NW¼.

Unsurveyed T. 33 N., R. 25 E.,
Sec. 4;

Sec. 9, W½, NW¼NE¼.
Unsurveyed T. 33½ N., R. 24 E.,
Sec. 25, 26, 27, 28, 29, 32, 33, 34, 35,
and 36;

Unsurveyed T. 34 N., R. 24 E.,
Sec. 33, NE¼, S½;
Secs. 34 and 35;
Sec. 36, S½.

Unsurveyed T. 34 N., R. 25 E.,
Sec. 33.

a. The following are prohibited:
i. Consumption or possession of any alcoholic beverage by a person under 21 years of age on public lands.
ii. Selling, offering to sell, or otherwise furnishing or supplying any alcoholic beverage to a person under 21 years of age on public lands.

b. This section does not apply to the selling, handling, serving or transporting of alcoholic beverages by a person in the course of his lawful employment by a licensed manufacturer, wholesaler or retailer of alcoholic beverages.

Dumping wastewater (grey or black) is prohibited on public lands from August 15, 2005 through September 19, 2005 inclusive. This includes but is not limited to dumping wastewater on public lands directly from a vehicle, trailer, wash basin, shower stall, bath tub, barrel, pool, or large water containment receptacle. "Wastewater" is defined as any liquid that is contaminated with soap, food waste, human waste, gas or oils, or other chemical that could cause harm to the human or natural environment. Event participants must transport wastewater off-site to an approved disposal site.

Black Rock City LLC/Burning Man will abide by fire restriction orders, except for the following when officially approved by BLM upon the request of Black Rock City LLC: Official art burns, authorized event fireworks, and other authorized fires using Black Rock City LLC/Burning Man-supplied fire barrels or approved platforms. Fire Restriction Orders may be in effect pursuant to 43 CFR 9212.2 for all lands managed by the BLM Winnemucca Field Office.

DATES: August 15, 2005, to September 19, 2005.

FOR FURTHER INFORMATION CONTACT: Dave Cooper, National Conservation Area Manager, Bureau of Land Management, Winnemucca Field Office, 5100 E. Winnemucca Blvd., Winnemucca, NV 89445-2921, telephone: (775) 623-1500.

Authority: 43 CFR 8364.1.

Penalty: Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the

applicable provisions of 18 U.S.C. 3571, or both.

Rodger T. Bryan,

Acting Field Manager.

[FR Doc. 05-17643 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-130-1020-PH; HAG-145]

Notice of Intent To Prepare Resource Management Plan Revisions and an Associated Environmental Impact Statement for Six Western Oregon Districts of the Bureau of Land Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: This document provides notice that the BLM intends to revise six Resource Management Plans (RMP) with a single associated Environmental Impact Statement (EIS) for the Coos Bay District, Eugene District, Medford District, Roseburg District, Salem District, and the Klamath Falls Resource Area of the Lakeview District (planning area).

DATES: This notice initiates the public scoping process. Comments on the scope of the plan revisions, including issues or concerns that should be considered, must be submitted in writing to the address listed below by October 21, 2005. Dates and locations for public meetings or other events will be announced through mailings, the local news media, newsletters, and the BLM internet site at least 15 days prior to any event. These plan revisions are scheduled to be complete in 2008.

ADDRESSES: Written comments should be addressed to: BLM, Attn: Western Oregon Planning Revision (OR-930.1), P.O. Box 2965, Portland, OR 97208. In addition, the BLM intends to provide a Web site for the public to use to submit electronic comments. When the Web site is available, more information will be posted at <http://www.or.blm.gov>.

All public comments, including names and mailing addresses of respondents, may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, please state this prominently at the beginning of your written correspondence. The BLM will honor such requests to the extent allowed by

law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available to the public in their entirety.

FOR FURTHER INFORMATION CONTACT:

Individuals, organizations, and government agencies wishing more information or to have their name placed on an electronic or postal mailing list are urged to register on the Web site (when it is available; see above), or by sending a request to the Portland address above, or by contacting Alan Hoffmeister, Western Oregon Planning Revision Public Outreach Coordinator, at (503) 808-6629 or at alan_hoffmeister@or.blm.gov.

SUPPLEMENTARY INFORMATION: The planning area for the RMPs includes approximately 2,550,000 acres of public land and 69,000 acres of split-estate, where the lands only involve the Federal mineral estate.

The Federal Land Policy and Management Act of 1976 requires the development, maintenance, and revision of land use plans. The vast majority of the public lands in the planning area are Revested Oregon and California Railroad (O&C) lands, or Coos Bay Wagon Road (CBWR) lands, and are managed under the statutory authority of the Oregon and California Revested Railroad Lands Act of 1937 (O&C Act, Pub. L. 75-405). Preparation of the RMPs and EIS will conform to the above land management laws and will also comply with other Federal laws such as the Endangered Species Act, Clean Water Act, and the National Environmental Policy Act. Additionally, plan revisions will follow Federal regulations and BLM management policies.

Congress, in 1866, established a land grant to promote the completion of the Oregon and California Railroad from Portland, Oregon, to San Francisco, California. In 1916, Congress revested, or brought back into Federal ownership, the title to approximately 2.2 million acres of land deeded to the Oregon and California Railroad after the company violated the terms of the land grant. Congress also revested about 93,000 acres of CBWR lands due to similar circumstances in 1919. The O&C Act of 1937 placed management jurisdiction of these lands under the United States Department of the Interior and directed that timber thereon be managed for permanent forest production using the principle of sustained yield. The benefits of sustained yield forest management, as described in the O&C Act, are a permanent source of timber,

protection of watersheds, regulation of streamflow, and a contribution to the stability of local communities and timber industries and recreation facilities. The O&C Act also required that 50 percent of the revenue generated for management of the lands be returned to the 18 counties that contained revested lands.

The Northwest Forest Plan was completed in 1994 and provided direction to achieve the following five goals: (1) Never forget human and economic dimensions of the issues; (2) Protect the long-term health of forests, wildlife, and waterways; (3) Focus on scientifically sound, ecologically credible, and legally responsible strategies and implementation; (4) Produce a predictable and sustainable level of timber sales and nontimber resources; and (5) Ensure that Federal agencies work together.

All of the BLM districts have current RMPs that were completed in 1995. These 1995 RMPs incorporated the land use allocations and Standards and Guidelines from the Northwest Forest Plan. They also included decisions on other issues or programs such as land tenure, off-highway vehicles, etc. The RMPs provide guidance for all activities that occur on BLM-administered lands. The BLM will continue to manage these lands in accordance with the existing RMPs until the revised RMPs are completed and a Record of Decision is signed.

After the 1995 RMPs were completed, the American Forest Resource Council (AFRC) and others filed a lawsuit against the Secretaries of Agriculture and the Interior alleging that the Record of Decision for the Northwest Forest Plan violated the O&C Act and numerous other laws. The Secretary of the Interior, the Secretary of Agriculture, the AFRC, and the Association of O&C Counties agreed to settle this lawsuit in August of 2003. The settlement agreement requires the BLM, contingent on funding, to revise the current RMPs and consider at least one alternative that will not create any reserves on O&C lands except as required to avoid jeopardy to species listed as threatened or endangered under the Endangered Species Act or adverse modification to critical habitat for such species.

The revisions to the existing RMPs will answer the question regarding how the BLM should manage the O&C lands to achieve the O&C Act requirement of permanent forest production [as interpreted by the United States Court of Appeals for the Ninth Circuit] while complying with applicable laws such as

the Endangered Species Act and the Clean Water Act.

Through a public participation process, the BLM will work collaboratively with interested parties to identify which management direction is best suited to manage the O&C lands as described in the O&C Act and other provisions of laws considering local, regional, and national interests. The first step in this process is formal public scoping to help identify planning issues and provide for public comment on the proposed planning criteria.

Issues

The BLM has identified the following preliminary planning issues. A planning issue is identified as a "matter of controversy or dispute over resource management activities or land use that is well-defined or topically discrete and entails alternatives between which to choose" (H-1601-1 III.A.3). These preliminary issues are not final and may be refined or augmented based on public participation and comments received during scoping.

- Vegetation—How should BLM-administered forest lands be managed, both temporally and spatially, to provide a sustainable supply of wood and other forest products mandated by the O&C Act while meeting applicable laws and regulations?
- Habitat—How should the O&C lands be managed to contribute to the conservation of species consistent with the Endangered Species Act?
- Watershed management and water quality—How should BLM lands be managed to contribute to meeting the Clean Water Act and the Safe Drinking Water Act?
- Wildland fire and fuels—How should BLM-administered land be managed to reduce the risk of wildfires and integrate fire back into the ecosystem?

Planning Criteria

The BLM has also identified some preliminary criteria to guide the development of the RMPs, to avoid unnecessary data collection and analysis, and to ensure the RMPs are tailored to the issues. These criteria may be modified or other criteria identified after the public scoping process. The public is invited to comment on the following preliminary planning criteria:

- Purpose and need for the plan revisions:
- The BLM will manage the O&C lands to achieve the O&C Act requirement of permanent forest production [as interpreted by the United States Court of Appeals for the Ninth Circuit] while complying with

applicable laws such as the Endangered Species Act and the Clean Water Act.

Alternatives to be considered:

A reasonable range of alternatives will be considered. All alternatives will be designed to comply with existing laws. Two alternatives known at this time are:

- No Action—continue management under the current RMPs.
 - An alternative which will not create any reserves on O&C lands except as required to avoid jeopardy to species listed as threatened or endangered under the Endangered Species Act.
- In choosing a preferred alternative for the involved lands, the BLM will consider factors such as:
- The quality of habitats created.
 - The impacts on water quality limited streams.
 - The amount of timber produced.
 - The contributions to community stability.
 - Costs of implementation.

As part of this RMP process, the BLM will analyze areas for potential designation as Areas of Critical Environmental Concern (ACEC) in accordance with 43 CFR 1610.7-2. Public nominations for potential ACECs to be considered in these revisions must be made by October 28, 2005.

James G. Kenna,

Associate State Director, Oregon/Washington, Bureau of Land Management.

[FR Doc. 05-17641 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-33-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-952-05-1420-BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico

The plat representing the dependent resurvey and survey in Township 9 South, Range 12 East, and subdivision of sections, accepted March 7, 2005, for Group 943 New Mexico.

The Plat representing the dependent resurvey and survey of subdivision of

sections for Township 17 North, Range 18 West, accepted July 19, 2005, for Group 909 New Mexico.

The plat representing the dependent resurvey and survey of subdivision of sections for Township 20 North, Range 9 East, accepted July 20, 2005, for Group 109 New Mexico.

The plat, in 2 sheets, representing the dependent resurvey in Township 13 North, Range 19 West, accepted July 20, 2005, for Group 1028 New Mexico.

The Supplemental Plat showing aliquot parts and new lots 39 and 40 created from former lot 37 of section 18 for Township 20 North, Range 9 East, accepted May 2, 2005, for New Mexico.

The plat representing the dependent resurvey and survey of subdivision of sections for Township 23 North, Range 10 East, accepted June 30, 2005, for Group 1028 New Mexico.

The plat representing the dependent resurvey and survey of subdivision of sections for Township 23 North, Range 8 West, accepted March 30, 2005, for Group 1033 New Mexico.

Indian Meridian, Oklahoma

The plats representing the dependent resurvey and survey of Township 8 North, Range 12 East, accepted May 11, 2005, for Group 97 Oklahoma.

The plat representing the dependent resurvey and survey of Township 9 North, Range 12 East, accepted May 11, 2005, for Group 97 Oklahoma.

The plat representing the dependent resurvey and survey of Township 9 North, Range 7 East, accepted May 11, 2005, for Group 109 Oklahoma.

The plat representing the dependent resurvey and survey of Township 1 North, Range 2 West, accepted June 13, 2005, for Group 111 Oklahoma.

The plat representing the dependent resurvey and survey of Township 9 North, Range 11 East, accepted May 11, 2005, for Group 97 Oklahoma.

The plat representing the dependent resurvey and survey of Township 4 South, Range 2 West, accepted June 30, 2005, for Group 115 Oklahoma.

The plat representing the dependent resurvey and survey of Township 5 North, Range 4 West, accepted April 12, 2005, for Group 125 Oklahoma.

The plat representing the dependent resurvey and survey of Township 1 North, Range 5 West, accepted June 13, 2005, for Group 103 Oklahoma.

The plat representing the dependent resurvey and survey of Township 23 North, Range 8 East, accepted August 8, 2005, for Group 127 Oklahoma.

The plat representing the dependent resurvey and survey of Township 14 North, Range 25 East, accepted May 11, 2005, for Group 114 Oklahoma.

The plat representing the dependent resurvey and survey of Township 8 North, Range 5 West, accepted June 30, 2005, for Group 122 Oklahoma.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed.

A person or party who wishes to protest against any of these surveys must file a written protest with the New Mexico State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502-0115. Copies may be obtained from this office upon payment of \$1.10 per sheet.

Dated: August 23, 2005.

Robert A. Casias,

Chief Cadastral Surveyor.

[FR Doc. 05-17669 Filed 9-6-05; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1089 (Final)]

Certain Orange Juice From Brazil

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1089 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Brazil of certain orange juice, provided for in subheadings 2009.11.00, 2009.12.25, 2009.12.45, and 2009.19.00

of the Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult 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).

DATES: *Effective date:* August 24, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202) 205-3200, 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this

¹For purposes of this investigation, the Department of Commerce (Commerce) has defined the subject imports as certain orange juice for transport and/or further manufacturing, produced in two different forms: (1) Frozen orange juice in a highly concentrated form, sometimes referred to as FCOJM; and (2) pasteurized single-strength orange juice which has not been concentrated, referred to as NFC.

The scope of this investigation with regard to FCOJM covers only FCOJM produced and/or exported by those companies which were excluded or revoked from the pre-existing antidumping order on FCOJ from Brazil (52 FR 16426 (May 5, 1987)) as of December 27, 2004. Those companies are Cargill Citrus Limitada, Fischer S/A—Agroindustria (formerly Citrosuco Paulista S.A.), Montecitrus Industria e Comercio Limitada, and Sucocitrico Cutrale, S.A. Commerce also revoked the pre-existing antidumping duty order on FCOJ with regard to two additional companies, Coopercitrus Industrial Frutesp and Frutropic S.A. that are now doing business under the name COINBRA-Frutesp. Commerce must make successor-in-interest findings with respect to each entity no later than its final determination in this case, and should they find COINBRA-Frutesp to be the successor-in-interest to one or both of these companies, imports of FCOJM from the successor company will be included in the scope of this proceeding.

Excluded from the scope of the investigation are imports of reconstituted orange juice and frozen concentrated orange juice for retail (FCOJR). Reconstituted orange juice is produced through further manufacture of FCOJM, by adding water, oils and essences to the orange juice concentrate. FCOJR is concentrated orange juice, typically at 42E Brix, in a frozen state, packed in retail-sized containers ready for sale to consumers. FCOJR, a finished consumer product, is produced through further manufacture of FCOJM, a bulk manufacturer's product.

investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain orange juice from Brazil are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 27, 2004, by Florida Citrus Mutual, A. Duda & Sons, Inc., Citrus World, Inc., Peace River Citrus Products, Inc., and Southern Garden Citrus Processing Corp.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on December 20, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on January 10, 2006, at the

U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 3, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 6, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 29, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is January 17, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before January 17, 2006. On February 2, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 6, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to

the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is 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.

By order of the Commission.

Issued: August 31, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-17659 Filed 9-6-05; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1090 (Final)]

Superalloy Degassed Chromium From Japan

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping duty investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731-TA-1090 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of superalloy degassed chromium ("SD chromium"), provided for in subheading 8112.21.00 of the

Harmonized Tariff Schedule of the United States.¹

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult 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).

DATES: *Effective date:* August 18, 2005.

FOR FURTHER INFORMATION CONTACT: Megan Spellacy (202) 205-3190, 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 this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of superalloy

¹ For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "all forms, sizes, and grades of superalloy degassed chromium from Japan. Superalloy degassed chromium is a high-purity form of chrome metal that contains at least 99.5 percent, but less than 99.95 percent, chromium. Superalloy degassed chromium contains very low levels of certain gaseous elements and other impurities (typically no more than 0.005 percent nitrogen, 0.005 percent sulphur, 0.05 percent oxygen, 0.01 percent aluminum, 0.05 percent silicon, and 0.35 percent iron). Superalloy degassed chromium is generally sold in briquetted form, as "pellets" or "compacts," which typically are 1½ inches x 1 inch x 1 inch or smaller in size and have a smooth surface. Superalloy degassed chromium currently is classifiable under subheading 8112.21.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). This investigation covers all chromium meeting the above specifications regardless of tariff classification.

Certain higher-purity and lower-purity chromium products are excluded from the scope of this investigation. Specifically, the scope of the investigation does not cover electronics-grade chromium, which contains a higher percentage of chromium (typically not less than 99.95 percent), a much lower level of iron (less than 0.05 percent), and lower levels of other impurities than superalloy degassed chromium. The investigation also does not cover "vacuum melt grade" ("VMG") chromium, which normally contains at least 99.4 percent chromium and contains a higher level of one or more impurities (nitrogen, sulphur, oxygen, aluminum and/or silicon) than specified above for superalloy degassed chromium."

degassed chromium from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 4, 2005, by Eramet Marietta Inc., Marietta, OH, and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, Local 5-0639, Belpre, OH.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on October 20, 2005, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on November 3, 2005, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or

before October 24, 2005. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 28, 2005, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 27, 2005. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 10, 2005; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before November 10, 2005. On November 28, 2005, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 30, 2005, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain

documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is 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.

By order of the Commission.

Issued: August 31, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05-17658 Filed 9-6-05; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 008-2005]

Justice Management Division; Privacy Act of 1974; System of Records

AGENCY: Office of Attorney Recruitment and Management, Justice Management Division, Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice (DOJ) or the Department, Justice Management Division's Office of Attorney Recruitment and Management (OARM), proposes to establish a new system of records entitled "Federal Bureau of Investigation Whistleblower Case Files, JMD-023." The system maintains all documents and evidence filed with the Director of OARM, pertaining to requests for corrective action by employees of, or applicants for employment with, the Federal Bureau of Investigation (or recommendations for corrective action by the Department's Office of the Inspector General (OIG) or the Department's Office of Professional

Responsibility (OPR)) made under the Federal Bureau of Investigation's (FBI's) whistleblower regulations, 28 CFR Part 27.

DATES: In accordance with the requirements of 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, has 40 days in which to conclude its review of the system. Therefore, please submit any comments by October 17, 2005.

ADDRESSES: The public, OMB, and the Congress are invited to submit any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Louis DeFalaise, Director, Office of Attorney Recruitment and Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Suite 5100, 20 Massachusetts Ave., NW.).

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a(e)(4)) requires the Department to publish in the **Federal Register** this notice of a new system of records managed by the Department. The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier identified with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-driven, is called a "system of records." The Privacy Act requires each agency to publish notices of systems of records in the **Federal Register** and to prepare reports to OMB whenever the agency publishes a new or "altered" system of records.

The records in this system are used by the Director of OARM to determine whether an employee of, or applicant for employment with, the FBI made a protected disclosure that was a contributing factor in the FBI's decision to take (or not take, or threaten to take or not take) a covered personnel action against the employee or applicant and, if so, what, if any, corrective action can and should be appropriately ordered.

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.access.gpo.gov/nara/index.html>.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress.

Dated: August 31, 2005.

Paul R. Cortis,
Assistant Attorney General for Administration.

Justice/JMD-023

SYSTEM NAME:

Federal Bureau of Investigation Whistleblower Case Files

SECURITY CLASSIFICATION:

The system itself is not classified. However, items or records within the system may have national security/foreign policy classifications.

SYSTEM LOCATION:

Records in this system are located at the Department of Justice, Justice Management Division, Office of Attorney Recruitment and Management (OARM), 20 Massachusetts Avenue, NW., Suite 5100, Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any employee of, or applicant for employment with, the FBI who has filed a request for corrective action with OARM (or for whom the Department of Justice's Office of Inspector General (OIG) or Office of Professional Responsibility (OPR) has made a recommendation for corrective action to OARM) pursuant to a claim of unlawful reprisal brought under the FBI whistleblower regulations, 28 CFR Part 27.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system relate to OARM's adjudication process and customarily include the employee's request for corrective action (or OIG's/OPR's recommendation for corrective action), the parties' submissions, correspondence between OARM and the parties, and OARM's Orders and Opinions. These records may also include, but are not limited to, status conference notes, and evidentiary submissions and exhibits (e.g., affidavits, depositions, video/audio tapes, electronic communications, newspaper articles, etc.). Records in the system may also contain OIG/OPR Reports of Investigation, including those that serve to terminate an investigation of alleged unlawful reprisal (subject to 28 CFR 27.3(h) and (i)).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3101; 28 CFR Part 27.

PURPOSE(S):

The system maintains all documents and evidence filed with the Director of OARM pertaining to requests for corrective action by employees of, or applicants for employment with, the FBI (or recommendations for corrective action by OIG/OPR) brought under the FBI's whistleblower regulations, 28 CFR Part 27. The records in the system are used by the Director of OARM to determine whether an employee or applicant made a protected disclosure that was a contributing factor in the FBI's decision to take (or fail to take, or threaten to take or fail to take) a covered personnel action against the employee or applicant and, if so, what, if any, corrective action can and should be appropriately ordered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records or information from this system of records may be disclosed under the following circumstances when it has been determined by the Department of Justice that such a need exists:

1. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.
2. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests information on behalf of, and at the request of, the individual who is the subject of the record.
3. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904, 2906.
4. Where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, State, local, foreign, or tribal law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.
5. In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator

determines the records to be relevant to the proceeding.

6. To an actual or potential party to litigation or administrative proceeding, or to the party's authorized representative, for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

7. To appropriate officials and employees of a Federal agency or entity which requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

8. To Federal, State, local, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

9. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

10. To a former employee of the Department for purposes of: responding to an official inquiry by a Federal, State, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in hard copy and in electronic form accessible with office automation software on Department personal computers within OARM's office suite.

RETRIEVABILITY:

Information is retrieved by the name of the individual who has filed a request for corrective action with OARM (or for whom OIG or OPR has made a

recommendation for corrective action to OARM) pursuant to a claim of unlawful reprisal brought under the FBI whistleblower regulations, 28 CFR Part 27.

SAFEGUARDS:

Information in this system is safeguarded in accordance with applicable rules and policies, including the Department's automated systems security and access policies. Records in this system are maintained in restricted access space in Department of Justice controlled facilities and offices. All physical access to the building where this system of records is maintained is controlled and monitored by security personnel. Computerized data is password protected. The information is accessed only by authorized Department personnel or by non-Department personnel properly authorized to assist in the conduct of an agency function related to these records.

RETENTION AND DISPOSAL:

The retention and disposal schedule for these records is pending approval of the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Attorney Recruitment and Management, Justice Management Division, Department of Justice, 20 Massachusetts Avenue, NW., Suite 5100, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager named above.

RECORD ACCESS PROCEDURES:

Requests for access must be in writing and should be addressed to the System Manager named above. The envelope and letter should be clearly marked "Privacy Act Request." Requests for access to records must comply with the Department's Privacy Act regulations, to include a general description of the records sought, and the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions as described in the section entitled "Exemptions Claimed for the System." An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request according to the Records Access procedures and to the System Manager above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from contesting record procedures as described in the section entitled "Exemptions Claimed for the System." An individual who is the subject of a record in this system may amend those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from the subject of the record and/or the subject's representative, the FBI, officials of the Department, and official Department documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Attorney General has exempted this system from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (5) and (8); and (g). The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), and (k). A determination as to exemption shall be made at the time a request for access or amendment is received. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), and have been published in the **Federal Register**.

[FR Doc. 05-17700 Filed 9-6-05; 8:45 am]

BILLING CODE 4410-FR-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Cognitive and Psychological Research." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section of this notice on or before November 7, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202-691-7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202-691-7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics' Behavioral Science Research Laboratory (BSRL) conducts theoretical, applied, and evaluative research aimed at improving the quality of data collected and published by the Bureau. Since its creation in 1988, the BSRL has advanced the study of survey methods research, approaching issues of non-sampling error within a framework that draws heavily on the theories and methods of the cognitive, statistical, and social sciences. The BSRL research focuses primarily on the assessment of survey instrument design and survey administration, as well as on issues related to interviewer training, the interaction between interviewer and respondent in the interview process, and the usability of data-collection instruments by both interviewers and respondents. Improvements in these areas result in better accuracy and response rates of BLS surveys, frequently reduce costs in training and survey administration, and further ensure the effectiveness of the Bureau's overall mission.

II. Current Action

The purpose of this request for clearance by the BSRL is to conduct cognitive and psychological research designed to enhance the quality of the

Bureau's data collection procedures and overall data management. The BLS is committed to producing the most accurate and complete data within the highest quality assurance guidelines. The BSRL was created to aid in this effort and over the past 17 years it has demonstrated the effectiveness and value of its approach. Over the next few years, demand for BSRL consultation is expected to remain in demand as approaches are explored and tested for dealing with increasing nonresponse in key Bureau surveys. Moreover, as the use of web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and the impact of multiple modes on data quality. The BSRL is uniquely equipped with both the skills and facilities to accommodate these demands.

The revisions in the accompanying clearance package reflect an attempt to accommodate the increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRL. This package reflects planned research and development activities for FY2006 through FY2008, and its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220-0141.

Affected Public: Individuals and Households.

Total Respondents: 1,200.

Frequency: One time.

Total Responses: 1,200.

Average Time Per Response: 60 minutes.

Estimated Total Burden Hours: 1,200 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 26th day of August, 2005.

Kimberley Hill,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 05-17690 Filed 9-6-05; 8:45 am]

BILLING CODE 4510-24-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Units 1 And 2; Notice of Issuance of Renewed Facility Operating License Nos. DPR-58 And DPR-74 for An Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Renewed Facility Operating License Nos. DPR-58 and DPR-74 to Indiana Michigan Power Company (licensee), the operator of the Donald C. Cook Nuclear Plant (CNP), Units 1 and 2. Renewed Facility Operating License No. DPR-58 authorizes operation of CNP, Unit 1, by the licensee at reactor core power levels not in excess of 3304 megawatts thermal, respectively in accordance with the provisions of the CNP renewed license and its Technical Specifications. Renewed Facility Operating License No. DPR-74 authorizes operation of CNP, Unit 2, by the licensee at reactor core power levels not in excess of 3468 megawatts thermal, respectively in accordance with the provisions of the CNP renewed license and its Technical Specifications.

CNP Units 1 and 2 are Pressure Water Reactors located in Bridgman, Michigan. The licensee's application for the renewed license complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's

regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter 1, the Commission has made appropriate findings, which are set forth in each license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on December 10, 2003 (68 FR 68956).

For further details with respect to this action, see (1) Indiana Michigan Power Company's license renewal application for Donald C. Cook Nuclear Plant, Units 1 and 2 dated October 31, 2003, as supplemented by letters dated through March 24, 2005; (2) the Commission's safety evaluation report, dated July 2005 (NUREG-1831); and (3) the Commission's final environmental impact statements (NUREG-1437, Supplement 20, for the Donald C. Cook Nuclear Plant, Units 1 and 2, dated May 2005). These documents are available at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 and can be viewed from the NRC Public Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>.

Copies of Renewed Facility Operating License Nos. DPR-58 and DPR-74 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Director, Division of Regulatory Improvement Programs. Copies of the Donald C. Cook Nuclear Plant, Units 1 and 2, Safety Evaluation Report (NUREG-1831) and the Final Environmental Impact Statements (NUREG-1437, Supplement 20) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161 (<http://www.ntis.gov>), 703-605-6000, or Attention: Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954 Pittsburgh, PA 15250-7954 (<http://www.gpoaccess.gov>), 202-512-1800. All orders should clearly identify the NRC publication number and the requestor's Government Printing Office deposit account number or VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 30th day of August 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5-4851 Filed 9-6-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power and Light Company, Brunswick Steam Electric Plant Units, 1 and 2; Notice of Availability of the Draft Supplement 25 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of Brunswick Steam Electric Plant, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG-1437, regarding the renewal of operating licenses DPR-71 and DPR-62 for an additional 20 years of operation at Brunswick Steam Electric Plant, Units 1 and 2 (BSEP), respectively. BSEP is located in Brunswick County in southeastern North Carolina, near the mouth of the Cape Fear River. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft Supplement to the GEIS is publicly available in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852 or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the Public Electronic Reading Room on the NRC's Web site at <http://www.nrc.gov/reading-rm/adams.html>. The accession number for draft Supplement 25 to the GEIS is ML052380154. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. In addition, the William Madison Randall Library, located at 601 S. College Rd., Wilmington, North Carolina 28403 has agreed to make the draft plant-specific supplement to the GEIS available for public inspection.

Interested parties may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by December 2, 2005. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to

the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T-6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Room T-6D59, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by e-mail at BrunswickEIS@nrc.gov. All comments received by the Commission, including those made by Federal, State, and local agencies, Native American Tribes, or other interested persons, will be made available electronically at the Commission's PDR in Rockville, Maryland, and in ADAMS.

The NRC staff will hold two public meetings to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meetings will be held on October 18, 2005, at the Southport City Hall, 201 E. Moore Street, Southport, North Carolina 28461. The first meeting will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second meeting will convene at 7 p.m. and will continue until 10:00 p.m., as necessary. Both meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour before the start of each meeting at the Southport City Hall. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings by contacting Mr. Richard L. Emch, Jr., by telephone at 1-800-368-5642, extension 1590, or by e-mail at BrunswickEIS@nrc.gov no later than October 11, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. The meeting is on the second floor of the building and there is no elevator. Therefore, the meeting room is not handicap accessible. If special equipment or accommodations are

needed to attend or present information at the public meeting, Mr. Emch will need to be contacted no later than October 11, 2005, so that the NRC staff can determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Emch, Jr., License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Mr. Emch may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 30th day of August, 2005.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. E5-4853 Filed 9-6-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-213]

Connecticut Yankee Atomic Power Company, Haddam Neck Plant; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Theodore B. Smith, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone: (301) 415-6721; fax number: (301) 415-5398; e-mail: tbs1@nrc.gov.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering granting a partial exemption from the Recordkeeping requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix A Criterion 1, 10 CFR Part 50, Appendix B Section XVII, and 10 CFR 50.59(d)(3), for the Haddam Neck Nuclear Plant (HNP), East Hampton, CT, as requested by Connecticut Yankee Atomic Power Company (CY) on February 16, 2005. An environmental assessment was performed by the NRC staff in support of its review of the exemption request.

I. Introduction

CY is the licensee and holder of Facility Operating License No. DPR-61 for the HNP, a permanently shutdown decommissioning nuclear power plant. Although permanently shutdown, this facility is still subject to all rules, and orders of the NRC.

On December 5, 1996, CY notified NRC that operations had permanently ceased and that all fuel had been permanently removed from the reactor. On July 7, 2000, CY submitted its License Termination Plan, which the NRC approved on November 25, 2002. CY began actively decommissioning HNP in April 1999, through a contract with Bechtel Power Corporation. On March 26, 2005, CY completed transfer of all spent nuclear fuel to its Independent Spent Fuel Storage Installation.

II. Environmental Assessment Summary

Identification of Proposed Action

CY, in accordance with 10 CFR 50.12, "Specific Exemptions," has requested the following exemptions, to the extent necessary, from the record retention requirements of:

(1) 10 CFR part 50, Appendix A Criterion 1 which requires certain records be retained "through the life of the unit";

(2) 10 CFR part 50, Appendix B Criterion XVII which requires certain records be retained consistent with regulatory requirements for a duration established by the licensee; and

(3) 10 CFR 50.59(d)(3) which requires certain records be maintained until "Termination of a license issued pursuant to" Part 50.

Instead, CY proposes the following: 1) for Structures, Systems, and Components (SSCs) associated with safe power generation, eliminate records when the nuclear power unit and associated systems no longer exist, or 2) for SSCs associated with safe storage of fuel in the spent fuel pool, eliminate records when spent nuclear fuel has been completely transferred from the spent fuel pool and the spent fuel pool building is ready for demolition.

Need for Proposed Action

The requested exemption and application of the exemption will eliminate the requirement to maintain certain records, when they are no longer necessary due to the permanently shutdown status of the facility, and will thereby reduce the financial burden on ratepayers associated with the storage of a large volume of hardcopy records.

The Affected Environment and Environmental Impacts

The proposed action is purely administrative in nature and will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluent that may be released offsite and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluent and it has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that the proposed action will have no significant effect on the environment.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Under this alternative CY would continue to store the records in question until license termination which would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Agencies and Persons Contacted

None.

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant impacts on the quality of the human environment. Accordingly, the staff had determined that preparation of an Environmental Impact Statement is not warranted, and a Finding of No Significant Impact is appropriate.

IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated February 16, 2005 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML050550025). Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/NRC/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's Public Document

Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdrc@nrc.gov.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 16th day of August, 2005.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Deputy Director, Decommissioning Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E5-4852 Filed 9-6-05; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of September 5, 12, 19, 26, October 3, 10, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 5, 2005

Wednesday, September 7, 2005

9 a.m. Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m. Discussion of Security Issues (Closed—Ex. 3 & 9).

Thursday, September 8, 2005

9:25 a.m. Affirmation Session (Public Meeting) (Tentative).

- a. Private Fuel Storage Independent Spent Fuel Storage Installation Docket No. 72-22-ISFSI; Review of Utah Contention K (Aircraft Crash Hazards) Rulings (Tentative).

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

Week of September 12, 2005—Tentative

There are no meetings scheduled for the Week of September 12, 2005.

Week of September 19, 2005—Tentative

There are no meetings scheduled for the Week of September 19, 2005.

Week of September 26, 2005—Tentative

There are no meetings scheduled for the Week of September 26, 2005.

Week of October 3, 2005—Tentative

There are no meetings scheduled for the Week of October 3, 2005.

Week of October 10, 2005—Tentative

There are no meetings scheduled for the Week of October 10, 2005.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292.

Contact person for more information:

Michelle Schroll, (301) 415-1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301-415-7080, TDD: 301-415-2100, or by e-mail at aks@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: September 1, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05-17776 Filed 9-2-05; 10:04 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-28024]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 31, 2005.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules

promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 26, 2005, to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 26, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70-10313)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its wholly owned indirect nonutility subsidiary AEP Credit, Inc. ("AEP Credit"), both at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application with the Commission under sections 9(a) and 10 of the Act and rule 54 under the Act.

I. Background

By order dated June 14, 2000 (Holding Company Act Release No. 27186), the Commission authorized AEP to acquire all of the issued and outstanding common stock of Central and South West Corporation ("CSW"), a registered holding company, and all of its subsidiaries, including CSW Credit, Inc. ("CSW Credit"). On August 21, 2000, CSW Credit was renamed AEP Credit, and continued to operate under various grants of authority, some of which are described below.

A. Prior Orders

By order dated July 19, 1985 (Holding Company Act Release No. 23767, "Original Order"), the Commission authorized AEP Utilities, Inc. ("AEP Utilities"), formerly known as Central and South West Corporation, to organize a special-purpose entity, CSW Credit, to

factor the accounts receivable of AEP's public-utility company subsidiaries. The Commission also authorized CSW Credit to issue debt securities to finance its accounts receivable purchases and AEP Utilities to make equity investments in CSW Credit. *See* Original Order.

By order dated July 31, 1986, (Holding Company Act Release No. 24157, "1986 Order"), the Commission authorized, among other things, CSW Credit to expand the scope of the activities to include the factoring receivables of non-associate utilities. As a condition of the 1986 Order, CSW Credit was required to limit its acquisition of utility receivables from non-associate utilities ("Non-Associate Limit"). Later, as a condition of granting CSW Credit temporary relief from the Non-Associate Limit, the Commission imposed upon the company a quarterly reporting requirement ("Rule 24 Reporting Requirement"). *See* Holding Co. Act Release No. 26684 (March 11, 1997).

The Commission required that CSW Credit maintain the percentage of its debt to equity at not less than 5% debt and 95% equity ("Debt-Equity Requirement"). *See* Holding Company Act Release No. 25138 (August 30, 1990).

Most recently, the Commission authorized AEP Credit to continue to factor the accounts receivable of associate and non-associate utility companies, subject to certain conditions, through September 30, 2005.

B. AEP Credit's Current Operations

AEP Credit has entered into agreements to purchase accounts receivable from the following public-utility company subsidiaries of AEP: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Public Service Company of Oklahoma, Southwestern Electric Company, and Wheeling Power Company (collectively, "Operating Companies"). AEP Credit no longer purchases accounts receivable from non-associate public-utility companies.

Purchases of accounts receivable are at a discount, based on AEP Credit's cost of funds and collection history.¹

¹ Currently, there are two components of the discount calculation: (1) A financing cost component; and (2) a bad debt component. The financing cost component ("Carrying Charge") is based on AEP Credit's actual weighted average cost of funds. It includes the actual cost of amounts borrowed from the external markets (currently bank conduits), a return on equity contribution from Credit's parent and actual costs of any amounts

AEP Credit then sells the accounts receivable to third party financial institutions. Applicants state that transactions between AEP Credit and the Operating Companies comply with the "at cost" rules under the Act and, consequently, there is no cross-subsidization.

AEP Credit has entered into agency agreements with each of the Operating Companies. Those agreements provide that the Operating Companies act as a collection agent for the receipt of customer payments and collection and remit these payments to AEP Credit. The amount of the receivables bought by AEP Credit varies from month to month, based on the electric usage by the Operating Company's customers.

These sales are on a non-recourse basis to the Operating Companies. The Operating Companies are not required to sell their accounts receivable to AEP Credit for any specified period of time; an Operating Company may terminate its relationship with AEP Credit on 30 days notice.

AEP Credit funds its purchases of the receivables using funds it obtains under a receivables purchase agreement ("RPA"). Under the RPA, AEP Credit sells a certain undivided ownership interest in the accounts receivable on a revolving basis to a group of financial institutions, mentioned above. The RPA also provides that American Electric Power Service Corporation ("AEP Service"), a service company subsidiary of AEP, administers the collections received by AEP Credit and reports information regarding the receivables and collections to the agent of the financial institutions. AEP Service is reimbursed for all costs and expenses it incurs in connection with the services it provides under the agreement.

In addition to the funds obtained under the RPA, AEP Credit obtains funds to purchase receivables through equity contributions by AEP and a subordinated revolving loan by AEP.

Sales of the accounts receivable by the Operating Companies qualify for treatment as true sales of assets under Financial Accounting Standards Board Statement No. 140 (rather than as a loan secured by the receivables). AEP Credit is intended to be bankruptcy remote to

borrowed through the subordinated loan from AEP. Credit's actual cost of equity is the State authorized return on common equity of each individual Operating Company. AEP Credit's interest charges to the Operating Companies used in the Carrying Charge have always been and are anticipated to be less than the "prime rate of interest," as that term is normally used. The bad debt component is based on AEP Credit's actual bad debt charge-offs for the receivable pool. It is calculated as a rolling average of the actual historical charge-off statistics for the receivable pools of each Operating Company.

isolate the receivables from the creditors of the Operating Companies.

Applicants state that the factoring program allows the Operating Companies to reduce their working capital needs by accelerating the receipt of cash from the collection of customer accounts receivable thereby reducing the dependence of the Operating Companies upon more costly sources of working capital. Credit, as a special-purpose financing entity, can borrow money more cheaply than the Operating Companies can individually. Through the use of Credit, the Operating Companies are able to consolidate their accounts receivable into a larger pool and eliminate duplicate administrative costs in administering the program.

II. Requested Authority

Applicants request (1) authority for AEP to retain AEP Credit, whose business consists solely of factoring the accounts receivable of associate public-utility companies; (2) request that the Commission eliminate the Rule 24 Reporting Requirement; and (3) that the Commission eliminate the Debt-Equity Requirement.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. E5-4850 Filed 9-6-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52360; File No. SR-Amex-2004-76]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Relating to Contingency Trading Procedures

August 30, 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 September 10, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 26, 2005, the Exchange submitted Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposal.³ On August 29, 2005, the Exchange submitted Amendment No. 2 to the proposal.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Amex Rule 119A regarding contingency trading procedures.

The text of the proposed rule change, as amended, is set forth below. Proposed new language is in *italics*.

* * * * *

Contingency Trading Procedures— Alternative Trading Facility

Rule 119A. (a) Definitions:

The term "Alternative Trading Facility" ("ATF") for purposes of this Rule, shall mean the remote facility established by the Exchange for trading securities admitted to dealings in the event that the Exchange's primary trading facility at 86 Trinity Place is wholly or partially unusable.

(b) Except to the extent that the provisions of Rule 119A govern, or unless the context otherwise requires, the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF.

(c) The Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations and persons associated with members and member organization who are entitled to trade and support trading at the Exchange's facility at 86 Trinity Place. One or more individuals from each broker and specialist unit shall be allowed to conduct business on the ATF. Registered Option Traders will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading.

(d) If a Registered Option Trader is not allowed to trade on the ATF, the Registered Option Trader may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be

effected only for hedging, reducing risk, rebalancing or liquidating positions. (See Commentary .01 to Rules 958 and 958-ANTE)

(e) A member may use a personal cellular telephone to conduct business in the ATF subject to the following conditions:

(i) The member must maintain his or her cellular telephone records, including logs of calls placed, for a period of not less than one year. The Exchange reserves the right to inspect and/or examine such telephone records.

(ii) If a Floor broker receives an incoming call on a cellular telephone, and the caller wishes to give the broker an order for a security traded at the post where the broker is standing, the broker must step-out of the crowd prior to accepting the order. In contrast, if a broker receives an incoming call on a cellular telephone, and the caller wishes to give the broker an order for a security traded at some other location on the Floor, the broker does not have to leave the crowd where he or she is standing in order to receive the order. A Floor broker also may initiate an outgoing call on a cellular telephone and (1) accept an order for a security traded at the post where the broker is standing without leaving the trading crowd, or (2) accept an order for a security traded at some other location on the Floor.

(iii) Except as provided in this Rule 119A, all other requirements applicable to the use of an Exchange provided telephone by a member shall apply to the use by a member of a personal cellular telephone. (See Rule 220)

(f) In the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of Senior Floor Officials to serve on the Panel, qualified Exchange Officials may serve on the Panel without reference to their order of seniority.

* * * * *

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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposed Amex Rule 119A sets forth the Exchange's contingency trading with respect to the use of the Exchange's "Alternative Trading Facility" ("ATF"), which is a remote facility established by the Exchange for trading securities admitted to dealings in the event that the Exchange's primary trading facility at 86 Trinity Place is wholly or partially unusable.

Under proposed Amex Rule 119A(b) the provisions of the Constitution and Rules of the Exchange are applicable to trading conducted on the ATF, except to the extent that the provisions of Amex Rule 119A govern, or unless the context otherwise requires. Paragraph (c) of proposed Amex Rule 119A provides that the Exchange's Executive Vice President for Market Operations and Trading Floor Systems or his or her designee(s) shall have authority to designate the individuals who will be allowed to conduct a securities business on the ATF from among those members, member organizations, and persons associated with those members and member organizations who are entitled to trade and support trading at the Exchange's facility at 86 Trinity Place. Not all persons who generally conduct business at the Exchange's regular facility will be able to use the ATF due to occupancy restrictions at the facility. One or more individuals from each broker and specialist unit will be allowed to conduct business on the ATF. Registered Option Traders ("ROTs") will be allowed to conduct business on the ATF to the extent that there is space in the ATF to accommodate them based upon their volume of trading. Paragraph (d) to proposed Amex Rule 119A provides that if a ROT is not allowed to trade on the ATF, the ROT may initiate opening trades for his or her market maker account from off the ATF without reference to in-person requirements or the requirement that off-floor orders be effected only for hedging, reducing risk, rebalancing or liquidating positions.

Although the Exchange has installed tethered telephones at the ATF, it has not replicated its wireless telephone system at this facility. As a result, the Exchange is proposing to allow members to use personal cellular telephones to conduct business on the ATF subject to the same conditions that were applicable to the use of personal cellular telephones on the Amex following September 11, 2001. The

³In Amendment No. 1, the Exchange substantially revised the proposed rule text and corresponding description of the proposal in its Form 19b-4. Amendment No. 1 replaced Amex's original filing in its entirety.

⁴In Amendment No. 2, the Exchange made minor corrections to the rule text.

conditions applicable to the use of personal cellular telephones on the ATF are set forth in paragraph (e) to the proposed rule. Paragraph (f) provides that Exchange Officials may substitute for Senior Floor Officials without reference to their seniority in the event that a Floor Official's ruling is appealed to a three Senior Floor Official panel and there is an insufficient number of available Senior Floor Officials to consider the appeal.⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁶ in general and further the objectives of Section 6(b)(5)⁷ in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and processing information with respect to, and facilitating transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no 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

No written comments were solicited or received by the Exchange on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

⁵ The Exchange has a proposal pending with the Commission that would modify Amex Rule 22 to establish a three-level review process in which Floor Official decisions, as needed, may be appealed to a three Senior Floor Official Panel. See Securities Exchange Act Release No. 52325 (August 23, 2005), 70 FR 51392 (August 30, 2005) (SR-AMEX-2005-052).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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-Amex-2004-76 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-Amex-2004-76. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2004-76 and should be submitted on or before September 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz,
Secretary.

[FR Doc. E5-4854 Filed 9-6-05; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Docket No. 34-52345; File No. SR-PCX-2005-61]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change, and Amendment No. 1 Thereto Establishing a *De Minimis* Exception to the 80/20 Test

August 26, 2005.

I. Introduction

On April 26, 2005, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1954 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change seeking to modify the 80/20 Test in determining limitations on Principal Order³ access under the rules imposed by the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")⁴ and related rules. On July 29, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was noticed for comment in the **Federal Register** on July 27, 2005.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange defines a Principal Order as an order for a principal account of an eligible Market Maker that does not relate to a customer order the Market Maker is holding. See PCX Rule 6.92(a)(12)(ii).

⁴ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Philadelphia Stock Exchange, Inc., the PCX and the Boston Stock Exchanges, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁵ See Securities Exchange Act Release No. 52070 (July 20, 2005), 70 FR 43490 (July 27, 2005).

II. Description

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would modify the "80/20 Test" set forth in section 8(b)(iii) of the Linkage Plan and PCX Rule 6.96. PCX Rule 6.96 states that Market Makers should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this general principle by prohibiting a Market Maker from sending Principal Orders in an eligible option class if, in the last calendar quarter, the Market Maker's Principal Order contract volume is disproportionate to the Market Maker's contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for Market Makers with limited volume in an eligible option class. Specifically, if a Market Maker has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the Market Maker failing to meet the Test. This would bar the Market Maker from using the Linkage to send Principal Orders in that option class for the following calendar quarter. The Exchange contends that it was not its intention to bar Market Makers with limited volume from sending Principal Order through the Linkage in these circumstances since such trading was not "a primary aspect of their business." Thus, the proposed rule would create a *de minimis* exemption from the 80/20 Test for Market Makers that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the

⁶In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, completion, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change will increase the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as "a primary aspect of their business." The Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that members with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PCX-2005-61), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,

Secretary.

[FR Doc. 05-17707 Filed 9-6-05; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52344; File No. SR-Phlx-2005-33]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change, and Amendments No. 1 and 2 Thereto, Relating to Sending Principal Orders Via the Intermarket Options Linkage

August 26, 2005.

I. Introduction

On May 6, 2005, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change seeking to amend Phlx Rule 1087, Limitation on Principal Order³ Access, relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan")⁴ and related rules. On May 11, 2005, the Phlx submitted Amendment No. 1 to the proposed rule change. On July 8, 2005, the Exchange submitted Amendment No. 2. The proposed rule change, as amended, was noticed for comment in the **Federal Register** on July 27, 2005.⁵ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description

The purpose of this proposed rule change, as amended, is to implement proposed Joint Amendment No. 17 to the Linkage Plan. Joint Amendment No. 17, together with this proposed rule change, would establish a *de minimis* exception to the "80/20 Test" set forth

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A "Principal Order" is an order for the principal account of an eligible market maker that does not relate to a customer order the market maker is holding. See Section 2(16)(b) of the Linkage Plan.

⁴ On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket options market linkage ("Linkage") proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Inc., and the International Stock Exchange, Inc. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, the Phlx, the Pacific Exchange, Inc. and the Boston Stock Exchange, Inc. joined the Linkage Plan. See Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

⁵ See Securities Exchange Act Release No. 52072 (July 20, 2005), 70 FR 43495 (July 27, 2005).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.3(a)(12).

in Section 8(b)(iii) of the Linkage Plan and Phlx Rule 1087.

Section 8(b)(iii) of the Linkage Plan provides that Eligible Market Makers should send Principal Orders through the Linkage on a limited basis and not as a primary aspect of their business. The 80/20 Test implements this policy in the Linkage Plan and Phlx Rule 1087 by prohibiting a specialist or registered options trader (“ROT”) from sending Principal Orders in an eligible option class if, in the last calendar quarter, the specialist or ROT’s Principal Order contract volume is disproportionate to the specialist or ROT’s contract volume executed against customer orders in its own market.

The Exchange believes that applying the 80/20 Test has resulted in anomalies for ROTs with limited volume in an eligible option class. In particular, if a ROT has very little overall trading volume in an option, the execution of one or two Principal Orders during a calendar quarter could result in the ROT failing to meet the 80/20 Test. This would then prohibit the ROT from using the Linkage to send Principal Orders in that options class for the following calendar quarter. The Exchange believes that it is not the intent of the Linkage Plan and Exchange rules to prohibit ROTs with limited volume from sending Principal Orders through the Linkage in these circumstances since such trading clearly is not “a primary aspect of their business.” Accordingly, the proposed rule change seeks to establish a *de minimis* exception from the 80/20 Test in Phlx Rule 1087 for specialists and ROTs that have total contract volume of less than 1,000 contracts in an option class for a calendar quarter.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act⁷ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission believes that the proposed rule change will increase

⁶ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78f(b)(5).

the availability of Linkage to members of the Participants by limiting the applicability of the 80/20 Test in situations where market makers have minimal trading volume in a particular options class.

The Commission recognizes that the Exchange does not believe that it is necessary to bar market makers with limited volume from sending Principal Orders through the Linkage, as such trading does not raise concerns that a member is sending such orders as “a primary aspect of their business.” The Commission believes that the *de minimis* exemption from the 80/20 Test proposed by the Exchange for market makers that have a total contract volume of less than 1,000 contracts in an options class for a calendar quarter should ensure that specialists and ROTs with relatively low volume in a particular options class can send a reasonable number of Principal Orders without being barred from using the Linkage by application of the 80/20 Test in the following calendar quarter.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-Phlx-2005-33), as amended, is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁹

Jonathan G. Katz,
Secretary.

[FR Doc. E5-4855 Filed 9-6-05; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10180 and #10181]

Alabama Disaster #AL-00003

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alabama (FEMA-1605-DR), dated 08/29/2005.

Incident: Hurricane Katrina.
Incident Period: 08/29/2005 and continuing.

DATES: Effective Date: 08/29/2005.

Physical Loan Application Deadline Date: 10/28/2005.

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).

EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President’s major disaster declaration on 08/29/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Baldwin, Mobile, Washington.

Contiguous Counties:

Alabama: Choctaw, Clarke, Escambia, Monroe.

Florida: Escambia.

Mississippi: George, Greene, Jackson Wayne.

The Interest Rates are:

| | Percent |
|---|---------|
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 6.557 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.750 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 101808 and for economic injury is 101810

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05-17689 Filed 9-6-05; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10176 and #10177]

Louisiana Disaster #LA-00002

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA-1603-DR), dated 08/29/2005.
Incident: Hurricane Katrina.
Incident Period: 08/29/2005 and continuing.

DATES: *Effective Date:* 08/29/2005.
Physical Loan Application Deadline Date: 10/28/2005.
EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/29/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Parishes:

- Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John The Baptist, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, West Feliciana.

Contiguous Parishes/Counties:

- Louisiana: Allen, Avoyelles, Beauregard, Concordia, Evangeline, St. Landry.
 - Mississippi: Amite, Hancock, Marion, Pearl River, Pike, Walthall, Wilkinson.
 - Texas: Jefferson, Newton, Orange.
- The Interest Rates are:

| | Percent |
|---|---------|
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 6.557 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.750 |

| | Percent |
|--|---------|
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 101768 and for economic injury is 101770.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05-17686 Filed 9-6-05; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10178 and #10179]

Mississippi Disaster #MS-00005

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-1604-DR), dated 08/29/2005.

Incident: Hurricane Katrina.
Incident Period: 08/29/2005 and continuing.

DATES: *Effective Date:* 08/29/2005.
Physical Loan Application Deadline Date: 10/28/2005.
EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/29/2005, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

- Amite, Forrest, George Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, Walthall, Wilkinson.

Contiguous Counties:

- Mississippi: Adams, Covington, Franklin, Jefferson Davis, Jones, Lawrence, Lincoln, Wayne.
- Alabama: Mobile, Washington.

Louisiana: Concordia, East Feliciana, St. Helena, St. Tammany, Tangipahoa, Washington, West Feliciana.
 The Interest Rates are:

| | Percent |
|---|---------|
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 6.557 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.750 |
| Businesses and Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 101788 and for economic injury is 101790.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05-17685 Filed 9-6-05; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10169 and #10170]

Texas Disaster #TX-00062

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 08/29/2005.

Incident: Severe Storms and Flooding.
Incident Period: 08/09/2005 through 08/15/2005.

DATES: *Effective Date:* 08/29/2005.
Physical Loan Application Deadline Date: 10/28/2005.
EIDL Loan Application Deadline Date: 05/29/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be

filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Haskell.

Contiguous Counties:

Texas: Baylor, Jones, King, Knox, Shackelford, Stonewall, Throckmorton.

The Interest Rates are:

| | Percent |
|---|---------|
| Homeowners With Credit Available Elsewhere | 5.375 |
| Homeowners Without Credit Available Elsewhere | 2.687 |
| Businesses With Credit Available Elsewhere | 6.557 |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.750 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 10169 B and for economic injury is 10170 0.

The State which received an EIDL Declaration # is Texas. (Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 29, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05-17687 Filed 9-6-05; 8:45 am]

BILLING CODE 8025-01-P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104-13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways

to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below: (OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202-395-6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410-965-6400.

The information collection listed below is pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instrument by calling the SSA Reports Clearance Officer at 410-965-0454 or by writing to the address listed above.

SSI Monthly Wage Reporting Phase 2 Pilot—20 CFR 416.701-732-0960-NEW. Supplemental Security Income (SSI) recipients are required to report changes in their income, resources and living arrangements that may affect eligibility or payment amount. Currently, SSI recipients report changes on Form SSA-8150, Reporting Events—SSI, or to an SSA teleservice representative through SSA's toll-free telephone number, or they visit their local Social Security office.

The SSI wage reporting program area has the highest error rate largely due to non-reporting, which accounts for approximately \$500 million in overpayments each year. Consequently SSA is evaluating methods for increasing reporting. SSA will conduct a pilot to test an additional method for individuals to report wages for the SSI program. We are testing to determine if, given an easily accessible automated format, individuals will increase compliance with reporting responsibilities. Increased timely reporting could result in a decrease in improper payments. SSA will also be testing the use of knowledge-based authentication to determine if this is an effective method of accessing SSA's system.

During the pilot, participants who need to report a change in earned income will call an SSA toll-free telephone number to report the change.

The participants will access SSA's system using knowledge-based authentication (providing name, SSN and date of birth). Participants will either speak their report (voice recognition technology) or key in the information using the telephone key pad. SSA will issue receipts to disabled recipients who report wages using this method. Respondents to this collection are SSI recipients, deermors and representative payees of recipients who agree to participate in the pilot.

Type of Request: New information collection.

Number of Respondents: 600.

Frequency of Response: 6.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 300 hours.

Dated: August 31, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05-17726 Filed 9-6-05; 8:45 am]

BILLING CODE 4191-02-P

DEPARTMENT OF STATE

[Public Notice 5183]

Culturally Significant Objects Imported for Exhibition Determinations: "Memling's Portraits"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Memling's Portraits," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, NY from on or about October 12, 2005 to on or about December 31, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B.

Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: (202) 453-8048). The address is Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: August 31, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05-17805 Filed 9-6-05; 8:45 am]

BILLING CODE 4710-08-P

DEPARTMENT OF STATE

[Public Notice 5182]

Termination of Statutory Debarment and Reinstatement of Eligibility To Apply for Export/Retransfer Authorizations Pursuant to Section 38(g)(4) of the Arms Export Control Act for Orbit/FR, Inc.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has terminated the statutory debarment against Orbit/FR, Inc. pursuant to Section 38(g)(4) of the Arms Export Control Act (AECA) (22 U.S.C. 2778) and § 127.11 of the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130).

EFFECTIVE DATE: August 29, 2005.

FOR FURTHER INFORMATION CONTACT: David C. Trimble, Director, Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 663-2807.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA and Section 127.11 of the ITAR prohibit the issuance of export licenses or other approvals to a person, or any party to the export, who has been convicted of violating the AECA and certain other U.S. criminal statutes enumerated at section 38(g)(1)(A) of the AECA and § 120.27 of the ITAR. A person convicted of violating the AECA is also subject to statutory debarment under § 127.7 of the ITAR.

In March 2000, following entry of a guilty plea in November 1999, Orbit/FR was convicted of two counts of violating the AECA and the ITAR (U.S. District Court, Eastern District of Pennsylvania, Criminal Docket No. CR 99-560). Based on this conviction, Orbit/FR was statutorily debarred pursuant to Section 38(g)(4) of the AECA and § 127.7 of the ITAR and, thus, prohibited from participating directly or indirectly in exports of defense articles and defense

services. Notice of debarment was published in the **Federal Register** (65 FR 13072, March 10, 2000).

Section 38(g)(4) of the AECA and § 127.11 of the ITAR permit termination of debarment after consultation with the other appropriate U.S. agencies and after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns. Orbit/FR has taken steps to address law enforcement concerns, including entering a Consent Agreement with the Department of State whereby Orbit/FR will pay civil penalties in cash and remedial compliance measures. The Department of State has determined that Orbit/FR has taken appropriate steps to address the causes of the violations and to mitigate any law enforcement concerns. Therefore, in accordance with Section 38(g)(4) of the AECA and § 127.11 of the ITAR, the debarment against Orbit/FR is rescinded, effective August 29, 2005. The effect of this termination is that Orbit/FR and its affiliates may participate without prejudice in the export of defense articles and defense services subject to certain provisions of the AECA, the ITAR and the Consent Agreement.

Dated: August 29, 2005.

Rose M. Likins,

Acting Assistant Secretary of State for Political-Military Affairs, Department of State.

[FR Doc. 05-17746 Filed 9-6-05; 8:45 am]

BILLING CODE 4710-25-P

DEPARTMENT OF STATE

[Public Notice 5164]

Notice of Meeting; Meeting on Possible Mandate Expansion of the International Mobile Satellite Organization (IMSO)

The Department of State announces a meeting to hear public views on issues related to the possible expansion of the mandate of the International Mobile Satellite Organization (IMSO), to include new oversight and regulatory responsibilities that may affect U.S. and non-U.S. mobile satellite services providers. The IMSO is convening an Extraordinary Assembly of Parties December 13-18, 2005, for the member governments to consider and act on proposals to amend the intergovernmental IMSO Convention to expand the IMSO's oversight authority. Presently, this authority applies exclusively to Inmarsat plc. Proposals have been made to extend oversight to

all mobile satellite service providers, specifically in the context of provision of capacity for the Global Maritime Distress and Safety System. Additionally, discussion has emerged about possible roles the IMSO may play in the creation of a new vessel "Long Range Identification and Tracking" (LRIT) system being developed to enhance maritime security, and suggestions that "the organization may assume any other functions or duties" upon request and approval. Prior to the Assembly meeting, the IMSO Advisory Committee will meet October 4-5, 2005, and the International Maritime Organization's Maritime Safety Committee will have an intercessional meeting to discuss LRIT October 17-19, 2005. Both of these meetings may impact proposals and decisions of the IMSO Assembly and, accordingly, public views and advice are being sought well in advance of the IMSO Assembly.

Background documentation may be found on the Department's Web site: <http://www.state.gov/e/eb/cip/imso>. The Department of State's public meeting will take place on Thursday, September 15, 2005 from 2 p.m. to 5 p.m. at the Department's Harry S. Truman headquarters building, 2201 C St. NW., Washington, DC. (Please note that due to security considerations, parking in the vicinity of the building is extremely limited.) Members of the public are encouraged to participate and join in discussions, subject to the discretion of the moderator. Persons wishing to make formal presentations, should provide advance notice to the contacts below. Time may be limited. Persons planning to attend this meeting should send the following data by fax to (202) 647-5957 or e-mail to lambrh@state.gov not later than 72 hours before the meeting: (1) Name of the meeting, (2) name of participant, (3) organizational affiliation, (4) date of birth, (5) citizenship, and (6) either Social Security or Passport number. A valid government issued photo ID must be presented to gain entrance to the Department of State.

Dated: August 24, 2005.

Richard Lamb,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 05-17745 Filed 9-6-05; 8:45 am]

BILLING CODE 4710-07-P

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

2005–2006 Allocations of the Tariff-Rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined sugar, and sugar-containing products for the period that begins October 1, 2005 and ends September 30, 2006.

EFFECTIVE DATE: September 7, 2005.

ADDRESSES: Inquiries may be mailed or delivered to Elizabeth Leier, Director of Agricultural Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Elizabeth Leier, Office of Agricultural Affairs, (202) 395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. Pursuant to additional U.S. Note 8 to chapter 17 of the HTS, the United States also maintains a tariff-rate quota for certain sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for raw cane sugar for the period October 1, 2005–September 30, 2006, has been established by the Secretary of Agriculture at 1,226,057 metric tons, raw value (1,351,496 short tons). The quantity of 1,226,057 metric tons, raw value is being allocated to the following countries:

| Country | FY 2006 allocation |
|-----------------|--------------------|
| Argentina | 50,000 |
| Australia | 96,511 |
| Barbados | 8,139 |
| Belize | 12,791 |
| Bolivia | 9,302 |

| Country | FY 2006 allocation |
|--------------------------|--------------------|
| Brazil | 168,603 |
| Colombia | 27,907 |
| Congo | 7,258 |
| Cote d'Ivoire | 7,258 |
| Costa Rica | 17,442 |
| Dominican Republic | 204,649 |
| Ecuador | 12,791 |
| El Salvador | 30,232 |
| Fiji | 10,465 |
| Gabon | 7,258 |
| Guatemala | 55,813 |
| Guyana | 13,953 |
| Haiti | 7,258 |
| Honduras | 11,628 |
| India | 9,302 |
| Jamaica | 12,791 |
| Madagascar | 7,258 |
| Malawi | 11,628 |
| Mauritius | 13,953 |
| Mexico | 7,258 |
| Mozambique | 15,116 |
| Nicaragua | 24,418 |
| Panama | 33,721 |
| Papua New Guinea | 7,258 |
| Paraguay | 7,258 |
| Peru | 47,674 |
| Philippines | 156,975 |
| South Africa | 26,744 |
| St. Kitts & Nevis | 7,258 |
| Swaziland | 18,604 |
| Taiwan | 13,953 |
| Thailand | 16,279 |
| Trinidad-Tobago | 8,139 |
| Uruguay | 7,258 |
| Zimbabwe | 13,953 |

These allocations are based on the countries' historical shipments to the United States. The allocations of the raw cane sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin.

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 2005–September 30, 2006, has been established by the Secretary of Agriculture at 49,000 metric tons, raw value (54,013 short tons), of which the Secretary has reserved 28,656 metric tons (31,588 short tons) for specialty sugars. Of the quantity not reserved for specialty sugars, a total of 10,300 metric tons (11,354 short tons) is being allocated to Canada and 2,954 metric tons (3,256 short tons) is being allocated to Mexico. The remaining 7,090 metric tons (7,815 short tons) of the in-quota quantity not reserved for specialty sugars may be supplied by any country on a first-come, first-served basis, subject to any other provision of law. The 28,656 metric tons (31,588 short

tons) reserved for specialty sugars is also not being allocated among supplying countries and is available on a first-come, first-served basis, subject to any other provision of law.

In 1995, the United States Trade Representative determined, pursuant to 15 CFR 201.110(a), to suspend the certificate of quota eligibility (CQE) requirements for sugar entering under the tariff-rate quota for refined sugar. Based on the factors set out in 15 CFR 201.110(b), I have determined to reinstate the CQE requirements for sugar entering under the tariff-rate quota for refined sugar that is the product of a country that has been allocated a share of the tariff-rate quota for refined sugar. Accordingly, pursuant to 15 CFR 201.110(b), effective October 1, 2005, the provisions of subpart A of part 201 of title 15 of the Code of Federal Regulations are reinstated with respect to sugar entering under the tariff-rate quota for refined sugar that is the product of a country that has been allocated a share of the tariff-rate quota for refined sugar.

With respect to the tariff-rate quota of 64,709 metric tons (71,329 short tons) for certain sugar-containing products maintained pursuant to additional U.S. Note 8 to chapter 17 of the HTS, 59,250 metric tons (65,312 short tons) of sugar-containing products is being allocated to Canada. The remaining in-quota quantity for this tariff-rate quota is available to other countries on a first-come, first-served basis.

Conversion factor: 1 metric ton = 1.10231125 short tons.

Rob Portman,

United States Trade Representative.

[FR Doc. 05–17657 Filed 9–6–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Impact Statement and DOT Section 4(f)/303(c) Evaluation for a Proposed Replacement Airport for the City of St. George, UT and Notice of Public Hearing Date, Time, and Location

AGENCY: The lead federal agency is the Federal Aviation Administration (FAA), DOT. The National Park Service (NPS) is a cooperating Federal agency.

ACTION: Notice of availability, notice of comment period, notice of public information meeting and public hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this

Notice of Availability to advise the public that a Draft Environmental Impact Statement (DEIS) containing a DOT Section 4(f)/303(c) evaluation will be available for public review beginning September 9, 2005. The DEIS details the proposed development of a replacement airport and related facilities for the city of St. George, Utah and addresses the environmental impacts associated with its development. The DEIS presents the purpose and need for the proposed project, a comprehensive analysis of the alternatives to the proposed project, and potential environmental impacts associated with the proposed development of the proposed replacement airport.

The City of St. George, operator of the existing St. George Municipal Airport, has submitted an Airport Layout Plan, as revised, for approval. The DEIS assesses the potential impacts that may result from the development of a replacement airport with a 9,300-foot Runway 01/19 and all support facilities (*i.e.*, taxiways and associated lighting and NAVAIDS). This DEIS also assesses the federal action regarding installation of navigational aids, airspace use, approach and departure procedures, and associated terminal and landside projects. One historic site, the Little Black Mountain Petroglyph site, would potentially be affected. This document also assesses the potential noise impact on Zion National Park, Little Black Mountain Petroglyph site, and 42 other potentially noise sensitive properties in the vicinity.

Public Comment and Information Meeting/Public Hearing: The public comment period on the DEIS and associated studies will start September 9, 2005 and will end on November 8, 2005. A Public Information Meeting and Public Hearing will be held on October 19, 2005 at The Dixie Center, 1835 Convention Center Drive, St. George, UT 84790. The Public Information Meeting will begin at 3 p.m. (MST) and will last until 7 p.m. (MST). The Public Hearing will be conducted concurrently with an information workshop.

The public will be afforded the opportunity to present oral testimony and/or written testimony pertinent to the subject of the hearing. Testimony from an elected official, group or agency representative will be limited to 5 minutes. All others will be given 3 minutes. Forms for providing written comments will also be available at the Public Hearing. Comments received via fax or e-mail can only be accepted with the full name and address of the individual commenting. All comments are to be submitted to Mr. David Field of the FAA, at the address shown below,

and the comments must be postmarked and email/fax must be sent by no later than midnight (MST), Tuesday, November 8, 2005. The DEIS may be reviewed for comment during regular business hours until November 8, 2005 at the following locations:

1. Cedar City Library, 303 North 100 East, Cedar City, UT 84720.
2. Hurricane Valley Branch, 36 South 300 West, Hurricane, UT 84737.
3. Santa Clara Branch, 1099 North Lava flow Drive, St. George, UT 84770.
4. Springdale Branch, 898 Zion Park Blvd, Spingdale, UT 84767-0509.
5. Washington County, 50 South Main, St. George, UT 84770.

A limited number of copies of the DEIS and related documents will also be available for review by appointment only at the following FAA or City of St. George offices:

1. FAA, Northwest Mountain Region Office, 1601 Lind Avenue, S.W., Suite 315, Renton, WA 98055, (425) 227-2610.
2. FAA, Denver Airports District Office, 26805 East 68th Avenue, Suite 224, Denver, CO 80249, (303) 342-1254.
3. St. George Municipal Building, 175 East 200 North, St. George, UT 84770, (435) 634-5800.
4. St. George Airport, 620 S. Airport Road, St. George, UT 84770, (435) 634-5822.

An electronic copy of the DEIS is available on the project Web site and can be accessed at <http://www.airportsites.net/sgu-eis>.

SUPPLEMENTARY INFORMATION: The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible and address the analysis of potential environmental impacts and the adequacy of the proposed action or merits of alternatives. Reviewers should organize their participation so that it is meaningful and makes the agencies aware of the viewer's interests and concerns using quotations and other specific references to the text of the Draft EIS and related documents. Matters that could have been raised with specificity during the Draft EIS comment period may not be considered if they are raised later in the decision making process. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely manner so that the FAA has an opportunity to address them.

FOR FURTHER INFORMATION CONTACT: Mr. David Field, Manager, Planning/Programming Branch, Airports Division, Federal Aviation Administration,

Northwest Mountain Region, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055-4056, Telephone: (425) 227-1600, E-mail: David.Field@faa.gov.

Issued in Renton, Washington on August 31, 2005.

David A. Field,
Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 05-17716 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-2005-54]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 19, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA-200X-XXXXX] by any of the following methods:

- *Web site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

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

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

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

• *Federal eRulemaking Portal*: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 30, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA-2005-21309.

Petitioner: Ameristar Air Cargo, Inc.

Section of 14 CFR Affected: 14 CFR 121.434(g).

Description of Relief Sought: To permit Captain Raymond, to serve as a required pilot crewmember on McDonnell Douglas DC-9 (DC-9) airplanes without acquiring at least 100 hours of line operating flight time, on the DC-9, within the number of days specified by § 121.434(h)(3) or (4) or requiring the training required by § 121.434(h)(4)(ii).

[FR Doc. 05-17649 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92-463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of meeting.

Name: Research, Engineering and Development Advisory Committee.

Time and Date: September 20—9 a.m. to 5 p.m., September 21—9 a.m. to 12 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue, SW.,—Bessie Coleman Room, Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. We will also receive recommendations from the Air Traffic Services Transition Working Group. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267-8937 or gfloria.dunderman@faa.gov. Attendees will have to present picture ID at the security desk and escorted to the Bessie Coleman Room.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 29, 2005.

Joan Bauerlein

Director of Operations Planning Research & Development.

[FR Doc. 05-17650 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2005-22179]

Agency Information Collection Activities; Request for Comments; Clearance of a New Information Collection; Highways for LIFE Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under SUPPLEMENTARY INFORMATION. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 7, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA-2005-22179 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.

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

FOR FURTHER INFORMATION CONTACT: Charles Churilla, 202-366-5295, Department of Transportation, Federal Highway Administration, Office of Infrastructure, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Highways for LIFE Pilot Program.

Background: Section 1502 of SAFETEA-LU establishes the "Highways for LIFE" Pilot Program. The purpose of the Highways for LIFE pilot program is to advance longer-lasting highways using innovative technologies and practices to accomplish the fast construction of efficient and safe highways and bridges. "Highways for LIFE" is focused on accelerating the rate of adoption of proven technologies. The program will provide funding to States to accelerate technology adoption to construct, reconstruct, or rehabilitate Federal-aid highway projects that incorporate innovative technologies that will improve safety, reduce congestion due to construction and improve quality. Those States interested in participating in the "Highways for LIFE" program will submit an application for project funding. The information to be provided on the application includes a description of the project, the innovative technologies to be used and a description of how these technologies will improve safety, reduce construction congestion and improve quality. The collected information will be used by FHWA to evaluate and select projects for "Highways for LIFE" funding.

Respondents: The fifty State Departments of Transportation, the District of Columbia and Puerto Rico.

Frequency: The information will be collected annually beginning in fiscal year 2006 and ending in fiscal year 2009.

Estimated Average Burden per Response: 8 hours per respondent per application.

Estimated Total Annual Burden Hours: It is expected that the respondents will complete approximately 30 applications for an estimated 240 total annual burden hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: August 30, 2005.

James R. Kabel,
Chief, Management Programs and Analysis Division.

[FR Doc. 05-17651 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration, Office of Hazardous Materials Safety

Notice of Delays in Processing of Exemption Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous Materials Exemptions and Approvals,

Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

- N—New application
- M—Modification request
- X—Renewal
- PM—Party to application with modification request

Issued in Washington, DC, on August 31, 2005.

R. Ryan Posten,
Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|-----------------------------------|---|------------------|------------------------------|
| New Exemption Applications | | | |
| 13183-N | Becton Dickinson, Sandy, UT | 4 | 09-30-2005 |
| 13281-N | The Dow Chemical Company, Midland, MI | 4 | 09-30-2005 |
| 13266-N | Luxfer Gas Cylinders, Riverside, CA | 4 | 09-30-2005 |
| 13302-N | FIBA Technologies, Inc., Westboro, MA | 4 | 09-30-2005 |
| 13341-N | National Propane Gas Associations, Washington, DC | 3 | 09-30-2005 |
| 13314-N | Sunoco Inc., Philadelphia, PA | 4 | 09-30-2005 |
| 13309-N | OPW Engineered Systems, Lebanon, OH | 4 | 09-30-2005 |
| 13347-N | ShipMate, Inc., Torrance, CA | 4 | 09-30-2005 |
| 13346-N | Stand-By-Systems, Inc., Dallas, TX | 1 | 09-30-2005 |
| 14151-N | Chevron Texaco, Houston, TX | 4 | 09-30-2005 |
| 14149-N | Digital Wave Corporation, Englewood, CO | 4 | 09-30-2005 |
| 14140-N | Albemarle Corporation, Baton Rouge, LA | 4 | 09-30-2005 |
| 14141-N | Nalco Company, Naperville, IL | 4 | 09-30-2005 |
| 14138-N | INO Therapeutics, Inc., Port Allen, LA | 4 | 09-30-2005 |
| 14038-N | Dow Chemical Company, Midland, MI | 1 | 09-30-2005 |
| 14010-N | Varsal, LLC, Warminster, PA | 4 | 09-30-2005 |
| 13999-N | Kompozit-Praha s.r.o., Dysina u Plzne, Czech Republic, CZ | 4 | 09-30-2005 |
| 13957-N | T.L.C.C.I, Inc., Franklin, TN | 4 | 09-30-2005 |
| 14179-N | USA Jet Airlines, Belleville, MI | 4 | 09-30-2005 |
| 14167-N | Trinityrail, Dallas, TX | 4 | 09-30-2005 |
| 14163-N | Air Liquide America L.P., Houston, TX | 4 | 09-30-2005 |
| 14159-N | Chevron Texaco, Richmond, CA | 4 | 09-30-2005 |
| 14162-N | BSCO Incorporated, Forest Hills, MD | 4 | 09-30-2005 |
| 14150-N | Eli Lilly & Company, Indianapolis, IN | 4 | 09-30-2005 |
| 13582-N | Linde Gas LLC (Linde), Independence, OH | 4 | 09-30-2005 |
| 13563-N | Applied Companies, Valencia, CA | 4 | 09-30-2005 |
| 13547-N | CP Industries, McKeesport, PA | 4 | 10-31-2005 |
| Modification to Exemptions | | | |
| 7277-M | Structural Composites Industries, Pomona, CA | 4 | 10-31-2005 |
| 10019-M | Structural Composites Industries, Pomona, CA | 4 | 10-31-2005 |
| 10915-M | Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA | 1 | 10-31-2005 |
| 6263-M | Amtrol, Inc., West Warwick, RI | 4 | 08-31-2005 |

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|------------------------------|---|------------------|------------------------------|
| 10319-M | Amtrol, Inc., West Warwick, RI | 4 | 10-31-2005 |
| 12412-M | Hawkins, Inc., Minneapolis, MN | 3, 4 | 10-31-2005 |
| 11903-M | Comptank Corporation, Bothwell, ON | 4 | 10-31-2005 |
| 13229-M | Matheson Tri-Gas, East Rutherford, NJ | 4 | 10-31-2005 |
| 10590-M | ITW/SEXTON (formerly SEXTON CAN COMPANY, INC.), Decatur, AL | 4 | 10-31-2005 |
| 9659-M | Kaiser Compositex Inc., Brea, CA | 4 | 10-31-2005 |
| 11970-M | ExxonMobil Chemical Company, Mont Belvieu, TX | 4 | 10-31-2005 |
| 13580-M | Carleton Technologies Inc., Orchard Park, NY | 4 | 9-30-2005 |
| 12384-M | OilAir Hydraulics, Inc., Houston, TX | 4 | 9-30-2005 |
| 13327-M | Hawk FRP LLC, Ardmore, OK | 1 | 10-31-2005 |
| 7774-M | Pipe Recovery Systems, Inc., Houston, TX | 4 | 10-31-2005 |
| 13488-M | FABER INDUSTRIES SPA (U.S. Agent: Kaplan Industries, Maple Shade, NJ) | 4 | 10-31-2005 |
| 12988-M | Air Products & Chemicals, Inc., Allentown, PA | 4 | 10-31-2005 |
| 12284-M | The American Traffic Services Assn. (ATTSA), Fredericksburg, VA | 1 | 10-31-2005 |
| 11579-M | Dyno Nobel, Inc., Salt Lake City, UT | 4 | 10-31-2005 |
| 11241-M | Rohm and Hass Co., Philadelphia, PA | 1 | 09-30-2005 |
| 7280-M | Department of Defense, Ft. Eustis, VA | 4 | 10-31-2005 |
| 10878-M | Tankcon FRP Inc., Boisbriand, Qc | 1, 3 | 10-31-2005 |
| 8162-M | Structural Composites Industries, Pomona, CA | 4 | 10-31-2005 |
| 8718-M | Structural Composites Industries, Pomona, CA | 4 | 10-31-2005 |
| Renewal to Exemptions | | | |
| 9649-X | U.S. Department of Defense, Fort Eustis, VA | 1 | 09-30-05 |

[FR Doc. 05-17722 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety Advisory: Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricane Katrina

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

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to owners and operators of gas and hazardous liquid pipelines to communicate the potential for damage to pipeline facilities caused by the passage of Hurricane Katrina on August 29, 2005.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: <http://ops.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar, (202) 366-0568, or by e-mail at Joy.Kadnar@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this advisory bulletin is to warn all operators of gas and hazardous liquid pipelines in the Gulf of Mexico and adjacent state waters that pipeline safety problems may have been caused by the passage of Hurricane Katrina on August 29, 2005. PHMSA

received numerous reports of damage to pipeline facilities in the offshore and inland areas of Louisiana, Mississippi, Alabama, and the Florida Panhandle.

Department of the Interior reported on August 29, 2005 that 615 of the 819 oil platforms in the Gulf of Mexico had been evacuated and that crude oil production had dropped by nearly 92 percent, or 1.4 million barrels a day, and natural gas production was down 83 percent.

The first aerial inspections of crude oil and natural gas platforms have reported extensive damage and numerous oil and gas pipeline leaks. There is also a report of a production platform missing. Several on shore pipeline companies have reported facilities (pumping stations, compression stations, and terminals) to be underwater water and leaking.

The Federal pipeline safety regulations at 49 CFR parts 192 and 195 require operators to shut down and start up pipeline facilities in a safe manner and to conduct periodic pipeline patrols to detect unusual operating and maintenance conditions and to take corrective action if conditions are unsafe. Because this patrolling is generally by aircraft, pipelines exposed or damaged on the sea floor may not be visually detected. It is likely that some pipeline facilities and pipelines located in the area of Hurricane Katrina's impact are damaged or exposed.

The gas and hazardous liquid pipeline safety regulations require that operators mitigate the safety condition if a pipeline facility is damaged or if a pipeline is exposed on the sea floor or

constitutes a hazard to navigation. The regulations require that damaged pipeline facilities or exposed pipelines must be repaired, replaced, or reburied to eliminate the hazard, and pipelines that are a hazard to navigation must be promptly reported to the National Response Center (NRC) at 1-800-424-8802.

II. Advisory Bulletin (ADB-05-08)

To: Owners and operators of gas and hazardous liquid pipeline systems.

Subject: Potential for damage to pipeline facilities caused by the passage of Hurricane Katrina.

Advisory: All operators of gas and hazardous liquid pipelines in the Gulf of Mexico and adjacent state waters are warned that pipeline safety problems may have been caused by the passage of Hurricane Katrina on August 29, 2005. PHMSA received numerous reports of damage to pipeline facilities, particularly offshore Louisiana.

Pipeline operators are urged to take the following actions to ensure personal and environmental safety and the integrity of gas and hazardous liquid pipelines located in areas impacted by Hurricane Katrina:

1. Identify persons who normally engage in shallow water commercial fishing, shrimping, and other marine vessel operations and caution them that underwater offshore pipelines may have become unprotected on the sea floor. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their

crews endangered by an encounter with a underwater pipeline.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas where Hurricane Katrina may have affected a pipeline that deploying fishing nets or anchors, and dredging operations may damage the pipeline, their vessels, and endanger their crews.

3. In the process of bringing offshore and inland transmission facilities back online, check for structural damage to piping, valves, emergency shutdown systems, risers and supporting systems. Aerial inspections of pipeline routes should be conducted to check for leaks in the transmission systems. In areas where floating and jack-up rigs have moved and their path could have been over the pipelines, review possible routes and check for sub-sea pipeline damage where required.

4. Identify and correct any conditions on the pipeline as required by the Federal pipeline safety regulations.

PHMSA would appreciate receiving information about all damage to pipeline facilities in the Gulf of Mexico and adjacent State waters caused by Hurricane Katrina. The Federal pipeline safety regulations require that operators report certain incidents and accidents to PHMSA by specific methods. Damage not reported by these methods may be reported to Joy Kadnar at (202) 366-0568 or joy.kadnar@dot.gov.

(49 U.S.C. Chapter 601; 49 CFR 1.53).

Issued in Washington, DC on August 31, 2005.

Joy Kadnar,

Director of Engineering and Engineering Support.

[FR Doc. 05-17652 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety Advisory: Potential for Damage to Natural Gas Distribution Pipeline Facilities Caused by the Passage of Hurricane Katrina

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

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to owners and operators of natural gas distribution pipeline facilities to communicate the potential for damage to pipeline

facilities caused by the passage of Hurricane Katrina on August 29, 2005.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) Home page at: <http://ops.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Joy Kadnar, (202) 366-0568, or by e-mail at Joy.Kadnar@dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of this advisory bulletin is to warn all operators of natural gas distribution pipeline facilities that safety problems may have been caused by the passage of Hurricane Katrina on August 29, 2005.

Past instances of flooding have resulted in significant pipeline system damage including exposed pipes, failure of pipelines crossing rivers and streams, damage to meter sets, pipeline leaks from soil movement, and water leaking into pipeline systems. Due to the storm surge and extensive flooding caused by Hurricane Katrina, extensive damage to facilities may be expected.

The Federal pipeline safety regulations (49 CFR part 192) require operators to shut down and start up pipeline facilities in a safe manner and to conduct periodic pipeline patrols to detect unusual operating and maintenance conditions and to take corrective action if conditions are unsafe.

Gas pipeline safety regulations require that operators mitigate the safety condition if a pipeline facility is damaged. The regulations require damaged pipeline facilities be repaired or replaced as necessary to eliminate the hazard, and that damage resulting in a death or injury or exceeding \$50,000 must be promptly reported to the National Response Center (NRC) at 1-800-424-8802.

II. Advisory Bulletin (ADB-05-07)

To: Owners and operators of natural gas distribution pipeline facilities.

Subject: Potential for damage to natural gas distribution pipeline facilities caused by the passage of Hurricane Katrina.

Advisory: All operators of natural gas distribution pipeline facilities in the states of Louisiana, Mississippi, Alabama, and Florida are warned that pipeline safety problems may have been caused by the passage of Hurricane Katrina on August 29, 2005. Likely problems include but are not limited to damage of above ground equipment due to flooding and flying debris, damage to buried pipelines from soil movement, and water leaking into low pressure pipelines.

Pipeline operators are urged to take the following actions to ensure personal and environmental safety and the integrity of natural gas distribution pipeline facilities located in areas impacted by Hurricane Katrina:

1. Conduct additional leak surveys and inspection of above ground equipment as necessary to detect any damage which may have occurred.

2. For distribution systems or portions of systems that have been shut down, check for damage to piping, valves, emergency shutdown systems, risers and meter sets prior to restoring system operation and relighting customers.

3. Check for water that may have leaked into low pressure systems.

4. Identify and correct any conditions on the pipeline as required by the Federal pipeline safety regulations. (49 U.S.C. Chapter 601; 49 CFR 1.53).

Issued in Washington, DC on August 31, 2005.

Joy Kadnar,

Director of Engineering and Engineering Support.

[FR Doc. 05-17653 Filed 9-6-05; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34742]

Murray-Calloway Economic Development Corporation—Acquisition Exemption—Hardin Southern Railroad, Inc.

Murray-Calloway Economic Development Corporation (EDC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire by purchase from Hardin Southern Railroad, Inc., a rail line between milepost 38.34, near Murray, in Calloway County, KY, and milepost 30, near Hardin, in Marshall County, KY, a total distance of 8.34 miles.¹ EDC states that it does not intend to operate the line or to hold itself out to provide common carrier service.²

¹ This transaction is related to STB Finance Docket No. 34741, *KWT Railway, Inc.—Lease and Operate—Murray-Calloway Economic Development Corporation*, wherein KWT Railway, Inc. (KWT), has filed a notice of exemption to lease and operate the portion of rail line between milepost 38.34 and approximately milepost 37.34.

² EDC states that, “* * * [t]o the extent that the line is considered a “line of railroad” the EDC intends to embargo or discontinue service over the rest of the line.” Because EDC is acquiring the 8.34-mile line pursuant to 49 U.S.C. 10901, the entire line is a line of railroad, and EDC is acquiring a common carrier obligation to either provide service over all of it or assure that service is provided by another carrier. Should EDC seek to terminate that

Continued

EDC certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed \$5 million.

The transaction was expected to be consummated on or after August 15, 2005, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34742, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Mark Manning, P.O. Box 1911, Murray, KY 42071.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 31, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 05-17725 Filed 9-6-05; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

obligation in whole or in part in the future, it will need to file for authority to abandon or discontinue service. In connection with any such request, EDC should be aware of the Board's holding in *The Land Conservancy of Seattle and King County—Acquisition and Operation Exemption—The Burlington Northern and Santa Fe Railway Company*, STB Finance Docket No. 33389 (STB served Sept. 26, 1997).

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning a proposed new collection titled "Customer Complaint Form".

DATES: You should submit written comments by: November 7, 2005.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: Customer Complaint Form, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202) 874-4448, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb or Camille Dixon, (202) 874-5090, Legislative and Regulatory Activities Division (1557-0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874-5043.

SUPPLEMENTARY INFORMATION: The OCC is requesting comment on the following proposed information collection:

Title: Customer Complaint Form.

OMB Number: None assigned—new collection.

Description: The customer complaint form was developed as a courtesy for those that contact the Office of the Comptroller of the Currency's Customer Assistance Group and wish to file a formal, written complaint. The form allows the consumer to focus its issues and provide a complete picture of their

concerns, but is entirely voluntary. It is designed to prevent having to go back to the consumer for additional information, which delays the process. Completion of the form allows the Customer Assistance Group to process the complaint more efficiently.

The Customer Assistance Group will use the information to create a record of the consumer's contact, including capturing information that can be used to resolve the consumer's issues and provide a database of information that is incorporated into the OCC's supervisory process.

Type of Review: New collection.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,149.

Total Annual Responses: 2,149.

Frequency of Response: On occasion.

Total Annual Burden Hours: 142.

Comments submitted in response to this notice will be summarized and 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 30, 2005.

Stuart Feldstein,
Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05-17644 Filed 9-6-05; 8:45 am]

BILLING CODE 4810-33-P

Corrections

Federal Register

Vol. 70, No. 172

Wednesday, September 7, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06-OAR-2005-OK-0001; FRL-7953-8]

Approval and Promulgation of Air Quality Implementation Plans; Oklahoma; Attainment Demonstration for the Central Oklahoma Early Action Compact Area

Correction

In rule document 05-16192 beginning on page 48078 in the issue of Tuesday,

August 16, 2005, make the following correction:

§52.1920 [Corrected]

On page 48080, in §52.1920(e), in the table, in the “Name of SIP provision” column, in the second entry, in the last line, “Reduciton” should read “Reduction”.

[FR Doc. C5-16192 Filed 9-6-05; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Wednesday,
September 7, 2005**

Part II

Department of Commerce

**National Oceanic and Atmospheric
Administration**

**Oceanic and Atmospheric Research (OAR)
Assistant Administrator; Evaluation of
NOAA's Response to the August 6, 2004
Research Review Report; Notice**

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Oceanic and Atmospheric Research (OAR) Assistant Administrator; Evaluation of NOAA's Response to the August 6, 2004 Research Review Report**

AGENCY: The Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The Office of Oceanic and Atmospheric Research publishes this notice to announce the availability for public comment of the Science Advisory Board's (SAB) draft report on the evaluation of NOAA's response to the Research Review Report. "The Evaluation of NOAA's Response to the Research Review Report" can be found at: <http://www.sab.NOAA.gov/reports/reports.html>.

DATES: Comments on this draft document must be submitted by October 7, 2005.

ADDRESSES: The draft report on the evaluation of NOAA's response to the Science Advisory Board's Research Review Report will be available on the SAB Web site at <http://www.sab.NOAA.gov/reports/reports.html> on September 7, 2005.

The public is encouraged to submit comments electronically to research.review@noaa.gov For commenters who do not have access to a computer, comments may be submitted in writing to: NOAA Research, Science Advisory Board (SAB), c/o Ms. M. Whitcomb, Silver Spring Metro Center Bldg 3 Room

11419, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Ms. M. Whitcomb, Silver Spring Metro Center Bldg 3 Room 11419, 1315 East-West Highway, Silver Spring, Maryland 20910 (phone 301-713-2454 x173), during normal business hours of 8 a.m. to 5 p.m. eastern time, Monday through Friday, or visit the SAB Web site at: <http://www.sab.NOAA.gov/reports/reports.html>.

SUPPLEMENTARY INFORMATION: The Office of Oceanic and Atmospheric Research (OAR) publishes this notice to announce the availability of a draft report that evaluates NOAA's response to the August 6, 2004 Research Review Report. The SAB will post the draft report on "The Evaluation of NOAA's Response to the Research Review Report", for public comment on September 7, 2005. The Science Advisory Board is seeking public comment from all interested parties. This draft report is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated, where appropriate, in the final report being submitted to the NOAA Administrator.

NOAA asked the SAB to appoint an external panel to review progress in implementing recommendations from the Research Review Report. On August 16 and 17, a five person review panel met in Silver Spring, Maryland, to evaluate the progress made. This panel is tasked with evaluating the NOAA response to the August 2004 report's findings and recommendations. The panel is also tasked with providing additional recommendations to the Administrator to improve the efficiency and effectiveness of the NOAA research organization. This review panel will be disbanded once its final report to the NOAA Science Advisory Board is issued.

The draft report will be posted on the SAB Web site on September 7, 2005 for

public comment. Public comments may be submitted for 30 days, from September 7, 2005 to October 7, 2005.

NOAA welcomes all comments on the content of the report. We request comments on any inconsistencies perceived within the report, and possible omissions of important topics or issues. For any shortcoming noted within the draft report, please propose specific remedies.

The public is encouraged to submit comments electronically to research.review@noaa.gov.

Please follow these instructions for preparing and submitting comments. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please provide background information about yourself on the first page of your comments: your name(s), organization(s), area(s) of expertise, mailing address(es), telephone and fax numbers, email address(es). Overview comments should follow your background information and should be numbered. Comments that are specific to particular pages, paragraphs, or lines should follow any overview comments and should identify the page numbers to which they apply. Please number all pages (on the upper right hand of each page) and print identifying information at the top of each page. Comments may also be submitted in writing to: NOAA Research, Science Advisory Board (SAB), c/o Ms. M. Whitcomb, Silver Spring Metro Center Bldg 3 Room 11419, 1315 East-West Highway, Silver Spring, Maryland 20910.

Dated: August 31, 2005.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 05-17654 Filed 9-6-05; 8:45 am]

BILLING CODE 3510-KD-P



Federal Register

**Wednesday,
September 7, 2005**

Part III

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

**Diesel Particulate Matter Exposure of
Underground Metal and Nonmetal Mines;
Proposed Rule**

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219-AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Mines

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

ACTION: Proposed rule; notice of public hearings; close of comment period; request for data.

SUMMARY: We propose to revise the January 20, 2006 effective date of the existing diesel particulate matter (DPM) final concentration limit of 160 micrograms of total carbon (TC) per cubic meter of air (160_{TC}µg/m³) in the 2001 final rule “Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners,” published in the *Federal Register* on January 19, 2001 (66 FR 5706). We are considering staggered effective dates for implementation of the final DPM limit, phased-in over a multi-year period, primarily based on feasibility issues that have surfaced since promulgation of the 2001 final rule. We also propose to delete the existing provision that restricts newer mines from applying for an extension of time for meeting the final concentration limit. In addition we are seeking specific comments and data on an appropriate conversion factor for the final DPM limit, technological implementation issues, and the costs and benefits of this rule. Finally, in this proposed rule, we are interested in comments on the appropriateness of including in a final rule a provision for medical evaluation of miners required to wear respiratory protection and transfer of miners who have been determined by a medical professional to be unable to wear a respirator. Specific

questions regarding these issues are discussed within the appropriate sections in the preamble. These questions are italicized for ease of the reader.

DATES: Public hearing dates and locations are discussed in the **SUPPLEMENTARY INFORMATION** section below. If you wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates. Comments and other appropriate data for the record must be received by close of business on October 14, 2005.

ADDRESSES: (1) To submit comments, please include RIN: 1219-AB29 in the subject line of the message and send them to us at either of the following addresses.

Federal e-Rulemaking portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

E-mail: zzMSHA-comments@dol.gov. If you are unable to submit comments electronically, please identify them by RIN: 1219-AB29 and send them to us by any of the following methods.

Fax: (202) 693-9441.

Mail, hand delivery, or courier: MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Rm. 2350, Arlington, VA 22209-3939.

(2) We will post all comments on the Internet without change, including any personal information they may contain. You may access the rulemaking docket via the Internet at <http://www.msha.gov/reginfo.htm> or in person at MSHA’s public reading room at 1100 Wilson Blvd., Rm. 2349, Arlington, VA.

(3) To receive an e-mail notification when we publish rulemaking documents in the *Federal Register*, subscribe to our list serve at <http://www.msha.gov/subscriptions/subscribe.aspx>.

FOR FURTHER INFORMATION CONTACT: For information contact Rebecca J. Smith, Acting Director of the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Arlington, Virginia 22209-3939. Ms. Smith can be reached at (202) 693-9440.

SUPPLEMENTARY INFORMATION:

Outline of Preamble

This outline will assist the mining community in finding information in this preamble.

- I. Public Hearings
- II. Rulemaking Background
 - A. First Partial Settlement Agreement
 - B. Second Partial Settlement Agreement
- III. Rulemaking History
 - A. Advance Notice of Proposed Rulemaking (ANPRM) on the Interim and Final Concentration Limits
 - B. Notice of Proposed Rulemaking (NPRM) on the Interim Limit
 - C. Final Rule Revising the Interim Concentration Limit
- IV. Technological Feasibility
 - A. Introduction
 - B. Background
 - C. Remaining Technological Feasibility Issues
- V. Complexity of Developing an Appropriate Conversion Factor for the Final Concentration Limit
- VI. Economic Feasibility
- VII. Section 101(a)(9) of the Mine Act
- VIII. Section-by-Section Analysis
 - A. Section 57.5060(b)
 - B. Effect of Eliminating § 57.5060(c)(3)(i)
- IX. Medical Evaluation and Transfer
- X. Regulatory Impact Analysis
 - A. Executive Order 12866
 - B. Costs
 - C. Benefits
- XI. Regulatory Flexibility Act Certification
- XII. Paperwork Reduction Act
- XIII. Other Regulatory Considerations
- XIV. Proposed DPM Rule Text

I. Public Hearings

We will hold three public hearings on the proposed rule. The public hearings will be begin at 9 a.m., and will be held on the following dates and locations:

| Date | Location | Phone |
|--------------------------|---|----------------|
| September 26, 2005 | Little America Hotel, 500 South Main Street, Salt Lake City, UT 84101 | (801) 363-6781 |
| September 28, 2005 | Clarion Hotel Sports Complex, 9103 E. 39th Street, Kansas City, MO 64133 | (816) 737-0200 |
| September 30, 2005 | Marriott Louisville Downtown, 280 West Jefferson Street, Louisville, KY 40202 ... | (800) 228-9290 |

If you wish to make an oral presentation for the record, we ask that you submit your request at least 5 days prior to the hearing dates. However, you do not have to make a written request to speak. Any unallotted time will be made available for persons making same-day requests.

The hearings will begin with an opening statement from MSHA,

followed by an opportunity for members of the public to make oral presentations to a panel. Speakers will speak in the order that they sign in. At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence and cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at <http://www.msha.gov>.

We will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, through close of business on October 14, 2005.

II. Rulemaking Background

On January 19, 2001 we published a final rule addressing the health hazards to underground metal and nonmetal miners from exposure to diesel particulate matter (DPM) (66 FR 5706). The rule established new health standards for these miners by requiring, among other things, use of engineering and work practice controls to reduce DPM to prescribed limits. It set an interim and final DPM concentration limit in the underground metal and nonmetal mining environment with staggered effective dates for implementation of the concentration limits. The interim concentration limit of 400_{TC} µg/m³ was to become effective on July 20, 2002. The final concentration limit of 160_{TC} µg/m³ is scheduled to become effective January 20, 2006. In the 2001 final rule, we projected that the mining industry would meet the final concentration limit in their mines through the use of diesel particulate filtration devices, ventilation changes, and the turnover of equipment and engines to less polluting models (66 FR 5713, 5888).

Several mining trade associations and individual mine operators challenged the final rule and the United Steelworkers of America (USWA) intervened in the case, which is now pending in the United States Court of Appeals for the District of Columbia Circuit. The parties agreed to resolve their differences through settlement negotiations with us and we delayed the effective date of certain provisions of the standard.

A. First Partial Settlement Agreement

On July 5, 2001, as a result of an agreement reached in settlement negotiations, we published two notices in the **Federal Register**. One notice (66 FR 35518) delayed the effective date of § 57.5066(b) related to tagging requirements in the maintenance standard. The second notice (66 FR 35521) proposed a rule to make limited revisions to § 57.5066(b) and added a new paragraph to § 57.5067(b) "Engines" regarding the definition of the term "introduced." We published

the final rule on February 27, 2002 (67 FR 9180).

B. Second Partial Settlement Agreement

Settlement negotiations continued on the remaining unresolved issues in the litigation, and on July 15, 2002, the parties finalized a written agreement (67 FR 47296, 47297). Under the agreement, the interim concentration limit of 400_{TC} µg/m³ became effective on July 20, 2002, without further legal challenge. We afforded mine operators one year to develop and implement good-faith compliance strategies to meet the interim concentration limit, and we agreed to provide compliance assistance during this one-year period. We also agreed to propose rulemaking on several other disputed provisions of the 2001 final rule. The legal challenge to the rule was stayed pending completion of the additional rulemakings.

On July 20, 2003, we began full enforcement of the interim concentration limit of 400_{TC} µg/m³. Our enforcement policy was also based on the terms of the second partial settlement agreement and includes the use of elemental carbon (EC) as an analyte to ensure that a citation based on the 400 TC concentration limit is valid and not the result of interferences (67 FR 47298). The policy was discussed with the DPM litigants and stakeholders on July 17, 2003.

III. Rulemaking History

A. Advance Notice of Proposed Rulemaking (ANPRM) on the Interim and Final Concentration Limits

On September 25, 2002, we published an Advance Notice of Proposed Rulemaking (ANPRM) (67 FR 60199). We noted in the ANPRM that the scope of the rulemaking was limited to the terms of the Second Partial Settlement Agreement and posed a series of questions to the mining community related to the 2001 final rule. We also stated our intent to propose a rule to revise the surrogate for the interim and final concentration limits and to propose a DPM control scheme similar to that included in our longstanding hierarchy of controls scheme used in our air quality standards (30 CFR 56/57.5001–.5006) for metal and nonmetal mines. In addition, we stated that we would consider technological and economic feasibility for the underground metal and nonmetal mining industry to comply with revised interim and final DPM limits. We determined at that time that some mine operators had begun to implement control technology on their underground diesel-powered

equipment. Therefore, we requested relevant information on current experiences with availability of control technology, installation of control technology to reduce DPM levels, and cost implications of compliance with the 2001 final rule.

B. Notice of Proposed Rulemaking (NPRM) on the Interim Limit

In response to our publication of the ANPRM, some commenters recommended that we propose separate rulemakings for revising the interim and final concentration limits to give us an opportunity to gather further information to establish a final DPM limit, particularly regarding feasibility. In the subsequent notice of proposed rulemaking (NPRM) published on August 14, 2003 (68 FR 48668), we concurred with these commenters and notified the public in the NPRM that we would propose a separate rulemaking to amend the existing final concentration limit of 160_{TC} µg/m³. We also requested comments on an appropriate final DPM limit and solicited additional information on feasibility. The proposed rule also addressed the interim concentration limit by proposing a comparable PEL of 308 µg/m³ based on the EC surrogate and included a number of other provisions.

C. Final Rule Revising the Interim Concentration Limit

We published the final rule revising the interim concentration limit on June 6, 2005 (70 FR 32868). This rule changed the interim concentration limit of 400 µg/m³ measured by TC to a comparable PEL of 308 µg/m³ measured by EC. The rule requires our longstanding hierarchy of controls that is used for our other exposure-based health standards at metal and nonmetal mines, but retains the prohibition on rotation of miners for compliance. Furthermore, the rule, among other things, requires us to consider economic as well as technological feasibility in determining if operators qualify for an extension of time in which to meet the final DPM limit, and deletes the requirement for a control plan.

Currently, the following provisions of the DPM standard are effective: § 57.5060(a), establishing the interim PEL of 308 micrograms of EC per cubic meter of air which is comparable in effect to 400 micrograms of TC per cubic meter of air; § 57.5060(d), Addressing control requirements; § 57.5060(e), Prohibiting rotation of miners for compliance with the DPM standard; § 57.5061, Compliance determinations; § 57.5065, Fueling practices; § 57.5066,

Maintenance standards; § 57.5067, Engines; § 57.5070, Miner training; § 57.5071, Exposure monitoring; and, § 57.5075, Diesel particulate records.

IV. Technological Feasibility

A. Introduction

When we promulgated the 2001 final rule, we determined that control technologies would be available by January 20, 2006 to reduce DPM concentrations to $160_{TC} \mu\text{g}/\text{m}^3$ micrograms in all types of underground metal and nonmetal mines. In the 2001 final rule, we established a new compliance scheme for these mine operators to implement that was distinguishable from that of our other exposure-based health standards by requiring that miners' exposures be reduced to a full-shift equivalent environmental or concentration limit where miners work or travel. Historically, our metal and nonmetal exposure-based health standards have been based on a miner's full-shift personal exposure and required that mine operators reduce miners' exposures to hazardous chemical substances by establishing a hierarchy of controls utilizing feasible engineering and administrative controls supplemented by respiratory protection, if necessary. Since, we were regulating DPM for the first time we needed a tool to help us to determine whether the mining industry was capable of meeting the interim and final concentration limits of the 2001 final rule using a combination of engineering and work practice controls. We also needed a compliance assistance tool to help mine operators with selection of feasible controls from technology unfamiliar to the mining industry. Consequently, we developed the Estimator.

The Estimator mathematically calculates the effect of any combination of engineering and ventilation controls on existing DPM concentrations in a given production area of a mine. This model is in the form of a spreadsheet template that permits instant display of outcomes as inputs are altered. Depending on the amount and type of equipment an operator uses, mining companies could use the Estimator to evaluate the effectiveness of these controls prior to purchasing and installing such controls. We encouraged mine operators to use this tool to assist them in making their decisions regarding the appropriate controls for their mines in meeting the 2001 concentration limits.

In the preamble to the 2001 final rule, we included data from our studies where we evaluated emissions

generated by diesel powered equipment in several diverse underground mining operations which included an underground limestone mine, an underground salt mine, and an underground gold mine. In each mine, we concluded that the necessary combination of controls was available to reduce DPM concentrations well below the final concentration limit. Based on these studies, we concluded that engineering and work practice controls were available to reduce DPM concentrations in all underground metal and nonmetal mines to the required limits. We also distributed to the mining community our publication of "Practical Ways to Control Exposure to Diesel Exhaust in Mining—a Toolbox" which addresses various categories of available DPM controls. These categories of controls include use of low emission engines, low sulfur fuel, aftertreatment devices, ventilation, enclosed cabs, engine maintenance, work practices and training, fleet management, and respiratory protective equipment (66 FR 5712–13). Furthermore, we also examined information regarding types of engines and equipment found in underground metal and nonmetal mines along with their various ventilation systems and concluded that the 2001 final rule was technologically feasible for the mining industry (66 FR 5889).

We also concluded that the 2001 final rule was economically feasible but recognized the broad impact of the rule on the underground metal and nonmetal sector of the mining industry. We estimated that the annual cost of the 2001 final rule for these mines would be \$25.1 million. The cost for an average underground metal and nonmetal mine was projected to be approximately \$128,000 annually primarily for investment in equipment to meet the interim and final concentration limits. In reaching our cost estimates, we anticipated that the interim concentration limit would be met primarily with the use of diesel particulate filters (DPFs), environmental cabs, and ventilation; and the final concentration limit would be met with expanded use of DPFs, ventilation, and turnover in equipment to less polluting models (66 FR 5713, 5888).

We included a provision in the 2001 final rule to allow an additional two years for mines experiencing difficulty in reducing DPM levels to the final concentration limit due to technological constraints (66 FR 5861). The June 6, 2005, final rule on the interim limit subsequently revised the extension requirement to provide one year, renewable, extensions to comply with the final limit, based on economic or

technological infeasibility, but continues to prohibit newer mines from applying for extensions (70 FR 32966).

Following promulgation of the 2001 final rule, we agreed to engage in a joint MSHA/industry 31-Mine Study to, among other things, assess the technological and economic feasibility of underground metal and nonmetal mine operators to achieve compliance with the interim and final DPM concentration limits. Feasibility at each of the 31 mines was determined using the Estimator. The analyses were based on the highest DPM sample result obtained at each mine and all major DPM emission sources at each mine plus spare equipment. On January 6, 2003, we issued our final report entitled, "MSHA'S Report on Data Collected during a Joint MSHA/Industry Study of DPM Levels in Underground Metal and Nonmetal Mines." With regard to feasibility of compliance with both the interim and final concentration limits, we concluded in the study that it may be both technologically and economically feasible for metal and nonmetal underground mines to comply with the 2001 rule. At that time, however, we acknowledged our limited in-mine documentation on implementation of DPM control technology with issues such as retrofitting and regeneration of filters. Consequently, we committed to continue to consult with the National Institute for Occupational Safety and Health, industry and labor representatives on the availability of practical mine worthy filter technology. NIOSH peer reviewed our final report of the 31-Mine Study (70 FR 32870–73).

Furthermore, by letter to MSHA dated June 25, 2003, NIOSH stated that:

Operators will need to make informed decisions regarding filter selection, retrofitting, engine and equipment deployment, operation, and maintenance, and specifically work through issues such as in-use efficiencies, secondary emissions, engine backpressure, DPF regeneration, DPF reliability and durability. NIOSH is of the opinion that these issues can be solved if the informed decisions mentioned above are made. (70 FR 32923)

In the 2005 rulemaking on the interim limit, we revised our approach to reducing DPM levels by establishing our longstanding hierarchy of controls used for regulating our other exposure-based health standards at metal and nonmetal mines. Also, we changed the concentration limit to a permissible exposure limit whereby we measure a miner's personal exposure. The Estimator became less significant from our perspective in demonstrating feasibility since the 2005 rulemaking

record included more extensive evidence on the ability of the mining industry to meet the interim limit in 2005. Specifically, our rulemaking record included: our final report on the 31-Mine Study; NIOSH's peer review of the 31-Mine Study; results from our baseline sampling at mines covered under the DPM standard; results of our comprehensive compliance assistance work at mining operations with implementation issues affecting feasibility; NIOSH's conclusions on the performance of the SKC sampler and the availability of technology for control of DPM; NIOSH's Diesel Emissions Workshops in 2003 in Cincinnati and Salt Lake City; the Filter Selection Guide posted on the MSHA and NIOSH web sites; MSHA's final report on DPM filter efficiency; NIOSH's report titled, "Review of Technology Available to the Underground Mining Industry for Control of Diesel Emissions"; and, the NIOSH Phase I Isozone study titled, "The Effectiveness of Selected Technologies in Controlling Diesel Emissions in an Underground Mine—Isolated Zone Study at Stillwater Mining Company's Nye Mine," all of which were developed following promulgation of the 2001 DPM final rule (70 FR 32916).

To attain the interim DPM limit, mine operators are required to install, use, and maintain engineering and administrative controls to the extent feasible. When these controls do not reduce a miner's exposure to the DPM limit, controls are infeasible, or controls do not produce significant reductions in DPM exposures, operators must continue to use all feasible engineering and administrative controls and supplement them with respiratory protection. When respiratory protection is required under the final standard, mine operators must establish a respiratory protection program that meets the specified requirements. At this time, we believe that this compliance approach coupled with the time-frame for complying with the phased-in limits provides mine operators with maximum flexibility in compliance. We believe that this current compliance approach which incorporates the industrial hygiene concept of a hierarchy of controls scheme for implementing DPM controls would result in feasibility of compliance with each of the phased-in limits contained in this proposal. However, we continue to acknowledge that compliance difficulties may be encountered at some mines due to implementation issues and the cost of

purchasing and installing certain types of controls.

1. MSHA's 2001 Assumptions Regarding Compliance With the Final Concentration Limit

The assumptions that we used in 2001 in support of our cost estimates included:

(a) Fifty percent of the fleet will have new engines (these new engines do not impact cost of the rule) * * * Moreover, due to EPA [Environmental Protection Agency] regulations which will limit DPM emissions from engines used in surface construction, surface mining, and over-the-road trucks (the major markets for heavy duty diesel engines), the market for low tech "dirtier" engines will dry up * * * (b) one hundred percent of the production equipment and about fifty percent of the support equipment will be equipped with filters; (c) about thirty percent of all equipment will need to be equipped with environmentally controlled cabs; (d) twenty three percent of the mines would need new ventilation systems (fans and motors); (e) forty percent of the mines will need new motors on these fans; and (f) thirty two percent of the mines will need major ventilation upgrades (66 FR 5889–90).

Furthermore, we concluded that it would not be feasible to require this sector, as a whole, to lower DPM concentrations further, or to implement the required controls more swiftly (66 FR 5888).

2. Reasons Why the 2001 Assumptions Are Now Being Questioned.

During the 4½ years since the 2001 final rule was promulgated, the mining industry and MSHA have gained considerable experience with the implementation, use, and cost of DPM control technology. Miners' DPM exposures have also declined significantly from a mean of 808_{DPM} µg/m³ (646_{TC} µg/m³ µg/m³ equivalent) prior to the implementation of the standard, to a mean of 233_{TC} µg/m³ based on current enforcement sampling. The industry, however, is encountering economic and technological feasibility issues with DPM controls as they strive to reduce levels below the interim limit. When we established the 2001 final limit, we were expecting some mine operators to encounter difficulties implementing control technology because the rule was technology forcing. We projected that by this time, practical and effective filter technology would be available that could be retrofitted onto most underground diesel powered equipment. However, as a result of our compliance assistance efforts and through our enforcement of the interim limit, we have become aware that this assumption may not be valid. The

applications, engineering and related technological implementation issues that we believed would have been easily solved by now are more complex and extensive than previously thought.

Although DPF systems have been proven to be highly effective in reducing elemental carbon, mines are currently experiencing problems with selection and implementation of DPF systems for complying with the interim limit. Since the final limit will require mines to install more DPF systems, these selection and implementation problems will extend over a large portion of the mining industry. At this time we believe that solutions to the problems of selection and implementation have not proceeded as quickly as anticipated since promulgation of the 2001 final rule and many mines will not be able to achieve the final limit by January 20, 2006. Some of the implementation and operational difficulties encountered with the controls are discussed in the sections below.

We seek additional information regarding technological difficulties and whether they will increase the cost to comply with the final concentration limit above that estimated in the 2001 final rule. We are particularly interested in whether mine operators have attempted to institute DPF systems that are impractical or have failed to work for their mining operations. We wish to know what types and sizes of DPFs have been evaluated, what types of equipment have been fitted with DPFs, what types and horsepower of engines were installed on the equipment, details concerning monitoring of equipment exhaust temperatures prior to specifying a DPF for a given application, whether DPF installations include a provision for backpressure monitoring, DPF maintenance intervals, DPF life, the results of any DPF failure mode analysis, DPM reductions obtained, and any other data related to in-mine experiences with DPFs on underground metal and nonmetal mining equipment.

We believe that wider use of alternative fuels and filter technology can make the 160_{TC} µg/m³ final limit feasible if a staggered phase-in approach is adopted. By lowering the exposure limit in intervals over five years beginning in January 2007, market forces should have sufficient time and incentive to adjust to the new standard. Specifically, a reliable alternative fuel distribution system should induce mine operators to adopt this relatively low-cost method to achieve compliance. The development and distribution of alternative fuels is also encouraged by existing tax credits. We believe that regional distribution networks are

beginning to emerge. *We seek data on alternative fuel distribution systems.*

Retrofit options for self-cleaning filters should increase as the filter manufacturers become assured of a reliable market for the devices. Use of newer equipment with cleaner engines will also increase as older equipment is retired from service. We anticipate that this staggered approach will provide the needed time to resolve these logistical and operational issues, and consequently, may not increase our 2001 projection of the cost of compliance with the rule. During this phase-in, we will continue to work with the Diesel Partnership (discussed below) and the mining industry to address the DPF selection and implementation problems and identify effective solutions for the diverse metal and nonmetal mining environment.

Additionally, we request comments on the percentage of diesel equipment, by mine size, in metal and nonmetal mines that currently have newer, low DPM emitting engines such as EPA Tier I and Tier 2 compliant engines. Our 2001 cost estimates were based, in part, on the assumption that by the effective date of the final limit, 50% of the diesel equipment fleet would have new engines (66 FR 5889). *We are interested in whether our 2001 assumption was accurate.* If the percentage is lower than originally estimated, it may require the industry to rely even more heavily on filters and other types of controls at added costs. Relying on DPFs to be installed on older, higher DPM emitting engines may also introduce additional implementation issues since DPF manufacturers normally do not recommend adding DPFs to older engines. Although we recognize various types of controls that mine operators could use to reduce miner exposure to DPM, we believe that turnover in equipment to less polluting models and the use of DPFs would be the primary method of achieving compliance with the final DPM limit.

We also recognize promising advances in alternative fuel technology since the 2001 final rule was promulgated. These fuels can be extremely effective in reducing DPM emissions. Additionally, the fuels would be in tune with recent U.S. initiatives towards greater energy independence. On October 22, 2004, President Bush signed into law a 50-cent-per-gallon tax credit for producers of bio-diesel. He also extended federal tax credits for ethanol through 2007 as part of H.R. 4520, also known as the American Jobs Creation Act of 2004 (Pub. L. 108-357).

Currently, however, logistical problems exist with the distribution of these fuels to remote mining areas, and the effect of these fuels on power output and operation at high altitude needs to be addressed more fully.

Although MSHA, industry, and the Diesel Partnership are actively working to address these concerns, additional time may be needed to find effective solutions for the implementation of DPM controls.

B. Background

1. Diversity of Underground Mines Affected By the Final DPM Concentration Limit

The metal and nonmetal mining industry has 177 underground mines that use numerous pieces of diesel powered equipment, widely distributed throughout each mining operation. These mines employ an array of mining technologies to produce commodities including metals such as lead, zinc, platinum, gold, silver, etc. Also, there are different types of nonmetal mines that produce stone products such as limestone, dolomite, sandstone, and marble. Other underground nonmetal mines produce clay, potash, trona, soda ash, and salt. Not only do these mines vary in the commodities that they produce, but they also use different mine designs and mining techniques such as room and pillar mining and stope mining. Some of these mines are large, complex multilevel mines, while others are small adit-type mines. Ventilation levels in these mines also vary widely. Many limestone mines have only natural ventilation with variable air movement, whereas trona mines have high ventilation rates to dilute and remove methane gas released in the mining process. There are also deep metal mines with multiple levels that have far less ventilation than that found in underground trona mines. Furthermore, many metal and nonmetal mines are located in remote areas of the country, at high altitudes, or are subject to extremely hot or cold environments. Considering these factors as a whole, we have found that there is no single solution to control technology that would be effective for all metal and nonmetal mines in significantly reducing current DPM levels to or below the final DPM concentration limit of 160_{TC} micrograms.

2. Work of the M/NM Diesel Partnership (the Partnership)

Since promulgation of the January 2001 final rule, we have worked with a Partnership that is composed of representatives from the National

Institute for Occupational Safety and Health (NIOSH), industry trade associations, and organized labor. We are not a member of the Partnership because of our ongoing DPM rulemaking activities. The primary purpose of the Partnership is to identify technologically and economically feasible controls using existing and available technology that can be retrofitted onto existing diesel powered equipment in underground metal and nonmetal mines to reduce diesel particulate matter emissions to, or below, our interim and final limits.

The Partnership has been actively involved with NIOSH in its work on diesel particulate control technology including its isolated zone studies at the Stillwater Mine in Montana. NIOSH has published the following reports of its work with the Partnership: "The Effectiveness of Selected Technologies in Controlling Diesel Emissions in an Underground Mine—Isolated Zone Study at Stillwater Mining Company's Nye Mine (Phase I Study);" "An Evaluation of the Effects of Diesel Particulate Filter Systems on Air Quality and Personal Exposure of Miners at Stillwater Mining Case Study: Production Zone (Phase II Study);" and, "The Effectiveness of Reformulated Fuels and Aftertreatment Technologies in Controlling Diesel Emissions (Phase III—A Study in an Isolated Zone at Stillwater Mining Company's Nye Mine August 31–September 11, 2004)." NIOSH stated in its conclusion to the Phase III study that:

This study did not address the important critical path of economic and technical aspects relating to implementation of the studied technologies into underground mines. The successful implementation of control technologies is predicated on addressing issues which are relatively unique to each mine and even to individual applications within a given mine. Most of these technical and operational issues could be investigated through a series of long-term field studies where control technologies would be wisely selected and optimized for the applications, performance of the technologies would be continuously monitored and the effects of the controls on concentrations of diesel pollutants in the mine air would be periodically assessed. The findings of such studies would allow operators to make informed decisions regarding the selection, optimization and implementation of control technologies for its applications and maximize the benefits of using those technologies. It is recommended that these studies be designed and undertaken under the leadership of the Metal/Nonmetal Diesel Partnership.

On-going NIOSH diesel research related to the Partnership includes a contract that the NIOSH Pittsburgh Research Laboratory issued to Johnson

Matthey Catalyst to develop a system to control nitrogen dioxide (NO₂) emissions from diesel-powered underground mining vehicles equipped with the Johnson Matthey's Continuously Regenerating Trap (CRT®) system. This system promotes regeneration at lower temperatures and is widely used in urban bus applications. If the results of laboratory evaluations show that a system is suitable for use in underground mining, NIOSH would continue studying this control technology with a long-term field evaluation in an underground mine.

C. Remaining Technological Feasibility Issues

In January 2001, we concluded that technology existed to sample accurately for DPM with a TC method and to bring DPM levels to the 160 TC level by January 2006 (66 FR at 5889). We further concluded that if any particular mine found unforeseen technological barriers to meeting the January 2006 deadline, it could apply for an extension of up to two additional years to comply with the 160 limit (66 FR at 5889). Our discussion of technological feasibility in support of the interim PEL of 308_{EC} µg/m³ in the June 6, 2005 final rule concluded that it was technologically feasible to reduce underground miners' exposures to the interim PEL by using available engineering control technology and various administrative control methods. In fact, our testing at Kennecott Minerals Green's Creek Mine showed that ceramic diesel particulate filters (DPFs) were capable of reducing diesel exposures by 95%. However, we acknowledged that compliance difficulties may be encountered at some mines due to implementation issues and the cost of purchasing and installing certain types of controls. Specifically, implementation issues may adversely affect the feasibility of using DPFs to reduce exposures despite the results reported in NIOSH's Phase I Isozone Study.

Our experience since January 2001 has raised questions on technological feasibility for the mining industry as a whole, rather than for a small number of individual mines, to meet the 160 TC concentration limit by January 20, 2006. When we conducted our baseline sampling in 2002 and 2003, we found that over 75% of the underground mines covered by the 2001 final rule have levels that would exceed the final concentration limit of 160_{TC} micrograms. Our current enforcement data indicate that approximately 65% of the underground mines covered by the 2001 final rule have levels that would

exceed the final concentration limit. Although exposures have decreased with implementation of controls and enforcement of the interim concentration limit, we have tentatively concluded that the 160_{TC} microgram final concentration limit presents a significant challenge to a substantial number of underground mine operators and compliance may not be feasible by January 2006. That conclusion is supported by our current enforcement sampling results that indicate that many mining operations have exposures above the 160_{TC} concentration limit, and availability of effective control technology that will reduce exposures to the final limit is speculative at this time. Moreover, comments from industry trade associations and individual mine operators in the post-January 2001 rulemakings recommended that we repeal the 160 limit as technologically infeasible. Organized labor, on the other hand, has recommended that a limit below 160 is technologically feasible. *We request comments on whether compliance is technologically feasible by January 2006 and the appropriateness of a multi-year phase-in of the final limit. We also request comments and data on when the technology will be feasible.* Specific technological implementation issues are discussed in more detail in the following subsections C.1 through C.4.

We also request comments on whether compliance difficulties may lead to another problem by requiring a large number of miners to wear respirators until feasible controls are fully implemented. We have never had a standard that resulted in a significant percentage of the workforce being required to wear respiratory protection, and we are concerned about the impact on worker acceptance of the rule and about mine operators' ability to remain productive. *We are interested in public comment on how many miners would need to wear respirators to comply with the 2001 final limit and proposed multi-year phase-in of the final limit, and whether in each case they would need to wear respirators for their entire work shift, whether this amount of respirator usage is practical, and any other comments or observations concerning this issue.*

1. Implementation of Available DPFs

We continue to project that many mine operators will have to use DPFs to reduce DPM levels to the final concentration limit. The mining industry maintains that while some operators are using DPFs to control miners' exposures to the interim PEL, it is infeasible for them to further reduce

miners' exposures through expanded use of DPFs.

While passive DPF regeneration systems are preferred over active regeneration systems, many pieces of mining equipment do not have duty cycles that will consistently support passive regeneration. Passive regeneration is the process where the exhaust gas temperature produced by the engine is sufficient to burn off the collected DPM on the DPF. Passive regeneration is normally preferred because a DPF can be installed on a machine, and the operator does not have to be concerned with removing the DPF on a routine schedule that may occur at the end of every shift. However, passive regeneration does require the machine operator to monitor the engine's exhaust gas backpressure. As the DPF loads up with DPM, the inability of the exhaust gas to burn off the DPM allows the backpressure to increase. Increasing the backpressure above the manufacturer's specifications can cause engine and DPF damage. *We request information on the number of currently installed passive regeneration DPF filters. Also, we are interested in the methods used by the industry to match a passive regeneration DPF to a machine.* However, we are aware that two identical machines operating in two different mines may not both be able to use passive regeneration. *We would be interested in comments about practical experience with these implementation issues.*

If passive regeneration is infeasible, active regeneration is an alternative. Active regeneration depends on an external heat source for burning off the DPM. Mine operators have informed us that some mining operations cannot utilize active regeneration due to physical size of filters, machine down time, or the cost associated with underground regeneration stations required for DPF regeneration. *We request that commenters submit information from the mines that are utilizing active regeneration including data regarding the benefits and the practicability of active regenerating filters.*

Engine emissions and exhaust flows also affect the size of the DPF that needs to be installed. Both of these factors can affect both passive and active regeneration. If the DPF is undersized for a particular application due to high DPM emissions or high exhaust flows, a passive or active DPF system may not make it through the entire shift before it must be taken out of service for regeneration because of the high backpressure.

While some of the mining industry has made improvements by replacing older engines with newer engines in order to reduce DPM emissions, we believe this has occurred mostly for the larger horsepower engines, greater than 150 hp. Smaller engines normally found in the support equipment have not had DPM reductions equivalent to the larger engines. Since we estimated that 50% of the support equipment would probably need DPFs for compliance with the final limit (66 FR 5889–90), the higher DPM emissions from the engines used in support equipment can further complicate the impact on compliance. The mining industry has stated that it needs additional time to further evaluate the proper sizing of DPF systems for both passive and active regeneration.

We seek further comment regarding these technological implementation issues as they affect feasibility of compliance with the final concentration limit including the practicality of available DPM control technology. We request that the mining community specifically address issues surrounding off-board regeneration: back pressure build up; frequency of the necessity to clean DPFs; the difficulty of placement of regeneration stations; and information on the extent to which diesel powered equipment accommodates a retrofit of the DPF.

2. Benefits of On-Board Regeneration

a. *ArvinMeritor® System.* The ArvinMeritor® system, which utilizes active regeneration of the DPF, offers great potential for underground mines in further reducing DPM exposures. The ArvinMeritor® system utilizes an on-board fuel burner system to regenerate DPFs. This system actively regenerates the filter media during normal equipment operations by causing the fuel to ignite the burner and thereby increase the exhaust temperature in the filter system. Consequently, this system does not require the host vehicle to travel to a regeneration station to regenerate the DPF. The condition of the DPF is monitored via sensors. While this product was successfully evaluated at Stillwater's Nye Mine, we have recently learned that the manufacturer has decided to concentrate on working with Original Equipment Manufacturers (OEMs) where they would be selling 50 units or more to one customer rather than selling one or two units per customer.

b. *Johnson Matthey's CRT® System for DPM reduction (Johnson Matthey).* As stated above, passive regeneration works by using the exhaust gas generated by the engine to burn the DPM. Normally,

DPF manufacturers utilize catalyst technology to lower the temperature needed for successful passive regeneration. By lowering the exhaust gas temperature needed for passive regeneration, a broader range of machines will have the necessary duty cycle to generate the exhaust gas temperature needed to burn the DPM. However, when a platinum coating is used as the catalyst, it can also increase the nitrogen dioxide (NO₂) emissions from the engine exhaust. In mines with low ventilation rates, the increased NO₂ emissions can also result in increased NO₂ exposures to potentially dangerous levels for miners. We discuss this issue in the final rule on the interim PEL (70 FR 32924–26). Therefore, other methods for passive regeneration are being developed to resolve these issues.

In 2004, the NIOSH Pittsburgh Research Laboratory issued a contract to Johnson Matthey to develop a system that can regenerate at lower exhaust gas temperatures and control NO₂ emissions. The system is based on Johnson Matthey's CRT® system and promotes regeneration at lower temperatures. Such DPFs are widely used in urban bus applications and are capable of passively regenerating DPFs at the temperatures commonly seen in the exhausts of underground mining equipment (above 250 °C for at least 40% of the operation time).

The laboratory evaluation of the systems is being executed under NIOSH contract by the Center for Diesel Research (CDR) at the University of Minnesota. The objective is to examine performance and suitability of the systems relative to heavy-duty diesel engines in underground mining applications, with specific focus on the effectiveness of controlling NO₂. If the results of laboratory evaluations show that the system is suitable for use in underground applications, NIOSH would continue to study this promising control with a long-term field evaluation in an underground mine environment. *We request comments from the mining community regarding the foreseeable utility of these and other new control technologies for reducing DPM levels in underground metal and nonmetal mines.*

3. Operators' Limited Access to Alternative Fuels and Ultra Low-Sulphur Fuels

During our compliance assistance efforts, we observed mines with several applications of alternative fuels, including water emulsion fuels and bio-diesel fuels both of which are EPA approved fuels. We subsequently tested these alternative fuels to determine if

they could decrease tailpipe DPM emissions. In each application the change to an alternative fuel had a positive impact on reducing engine emissions and miners' exposures to DPM. In some cases, reductions of 50 to 80+ percent were measured. While we found notable benefits, the use of alternative fuels can also cause equipment operation issues for mine operators. These operational issues have included initial clogging of the fuel filters when bio-diesel is used, reduction of horsepower with the use of water emulsion fuels, and management of proper fueling of the correct fuel into specific machines. While these operational issues could be overcome, each mine has to work through implementation issues on a case-by-case basis.

The most common problem with alternative fuels is lack of geographic proximity of most mines to a fuel distributor. Fuel distribution centers tend to be near large cities. As a result, alternative fuels need to be transported to mine sites, in some cases significantly increasing costs. Fuel manufacturers are building distribution centers near mining areas to reduce the transportation costs, but these centers will take some additional time to complete. Limited distribution is also a feasibility issue for metal and nonmetal mine operators who seek to obtain ultra low sulfur fuel. However, as discussed elsewhere in this preamble, the commercial availability of ultra low sulfur fuel will increase during 2006 and beyond when on-highway vehicles in the United States will be required by the EPA to use only this type of diesel fuel.

a. *Water Emulsion Fuels.* Water emulsion fuels, such as PuriNox, are blends of diesel fuels and water. The water is held in suspension with a surfactant. The water in the fuel reduces the engine combustion temperature resulting in reduced NO₂ and reduced DPM emissions. However, the added water also reduces the engine's horsepower. While the per gallon price of the water emulsion fuel is the same as standard fuel, we are aware of increases in engine consumption of these fuels by as much as 15 percent. However, continued increased use in mines is currently limited due to lack of fuel availability in most mining regions. Manufacturers of this fuel must install centralized blender facilities in order to make the fuel more available and economically feasible for use by the metal and nonmetal mining industry.

Some fuel system issues have also been observed with some engines using water emulsion fuels. One issue appears

to be with the use of very efficient water separators used on engine fuel systems to remove water from the fuel lines. A very efficient water separator will actually remove the water from the emulsion, thus affecting the engine's performance. An engine manufacturer that has experienced this with its engines has recommended replacing the more efficient water separator with a less efficient one.

Another issue identified by some mine operators is that some small machines cannot run, or run poorly, on this fuel. We are not aware of any testing that has been done to prove or disprove this. This may or may not be due to less complex fuel systems that cannot handle a change in fuel properties. *We request any information that would help a mine operator determine if certain machines in a fleet cannot run efficiently on this type of fuel.*

Since water emulsion fuels have been associated with horsepower loss, mines will have to determine through their own in-mine test if their machines can continue to operate efficiently even with the power loss. Some situations where the power loss could affect a machine's productivity occur at multilevel underground mines at high altitudes. Also, mines that require the use of permissible engines with pre-chamber combustion, such as the metal and nonmetal gassy mines, may need to determine any additional effects on these types of engines. These mines may need additional time to assess the impact of the elevation and grade on power loss. *We request comments on the mining industry's experience with using water emulsion fuels to reduce DPM exposures.*

b. *Bio-Diesel Fuels.* While bio-diesel fuels are more readily available than water emulsion fuels, there has not been a consistent supply or standard cost of the fuel. Both costs and demand for these fuels in the mining industry have been related primarily to tax credits available for using the fuel. With current tax credits, bio-diesel can be an attractive fuel alternative for the mining industry. However, we have observed maintenance issues with application of bio-diesel fuels similar to those associated with water emulsion fuels. Particularly, bio-diesel functions as a solvent and cleans the fuel system. This results in increased clogging and replacement of fuel filters. It may take the mining industry some additional time to assess the impact of the increased maintenance on a mining operation.

The other issue related to the use of bio-diesel fuel is the percent of soy oil

in the mixture. While any blend is available, B20 is a 20 percent blend, and B50 is a 50 percent blend, etc., we note that significant DPM reductions are not realized unless the bio-diesel blend exceeds 20 percent. *We request comments on the mining industry's experience with using bio-diesel fuels to reduce DPM exposures.*

4. Installation of Environmental Cabs

Environmental cabs are a proven means to reduce worker exposure to DPM. While much of the construction-type equipment used in underground stone mines comes equipped with environmental cabs, the cabs on specialty mining equipment used in underground hard rock mining are less common, particularly in mines with narrow drifts or low seam heights. As mine operators realize the benefits of cabs, more and more pieces of equipment are being purchased or retrofitted with environmental cabs. These cabs provide protection for workers not only from diesel particulate but also from noise and dust.

Many mines have begun a retrofit program, but may require additional time to design and retrofit specialty mining equipment with environmental cabs. *We request comments on the mining industry's experience with using environmental cabs to reduce DPM exposures.*

V. Complexity of Developing an Appropriate Conversion Factor for the Final Concentration Limit

The June 6, 2005 rule uses a 1.3 conversion factor to convert the interim PEL of $400_{TC} \mu\text{g}/\text{m}^3$ to $308_{EC} \mu\text{g}/\text{m}^3$, because EC comprises only a fraction of TC. We used a factor of 1.3, to be divided into $400_{TC} \mu\text{g}/\text{m}^3$, to produce a reasonable estimate of TC without interferences. The EC interim limit is based on the median TC to EC (TC/EC) ratio of 1.3 that was observed for valid samples in the 31-Mine Study and agreed to in the second partial DPM settlement agreement (70 FR 32944). Enforcement sample results to date have also shown that for the $400_{TC} \mu\text{g}/\text{m}^3$ interim limit, 1.3 is the most appropriate conversion factor.

However, we believe at this time that the 1.3 conversion factor may not be appropriate to convert the final phased-in TC limits to EC because of the variety of DPM controls being adopted by mine operators since the 31-Mine Study. Depending on the types of DPM controls being installed at the mines, a new conversion factor for EC may be needed. Clean engines have more of an impact on reducing OC levels. Alternative fuels, ventilation, and work practices seem to

lower EC and TC at similar rates, while DPF and environmental cabs appear to be more effective in reducing EC levels. The actual TC to EC ratio could vary from mine to mine, and even from one section in a mine to another, based on the mix of controls at a mine. We are seeking to maintain the level of protection for miners provided by the final limit promulgated by the 2001 final rule, pursuant to Section 101(a)(9) of the Mine Act. When considering the feasibility of compliance and sampling constraints, we believe that the conversion factor from TC to EC for the phased-in final limits should take into account the OC and EC ratios so that the OC and EC components together would be equivalent to a TC concentration. We are working with NIOSH to develop an appropriate conversion factor for converting the TC limits of this rulemaking to EC limits. Information provided by NIOSH indicated that the ratio of TC to EC in the 31-Mine Study is 1.25 to 1.67 (70 FR 32944). NIOSH's report on the Phase I study conducted in May, 2003, shows that the EC reduction in the isolated zone with one DPF system was 88% and that two other systems gave greater than 96% EC reductions when the measured concentrations were normalized by ventilation rate. In the final report of the Phase II study, NIOSH indicated that higher EC reductions were observed in the field than were obtained in the laboratory for whole diesel particulate. The results of these studies, as well as other mine studies NIOSH has conducted, help inform us of the EC to TC ratio at different DPM concentrations. Measuring only the EC component ensures that only diesel particulate material is being measured. However, there are no established relationships between the concentration of EC and total DPM under various operating conditions. *We welcome comments regarding the types of data we should request from NIOSH to assist us in developing an appropriate conversion factor for converting the TC limits of this proposed rule to EC limits.*

We will initiate a separate rulemaking to determine what the correct TC to EC conversion factor will be for the phased-in final limits. *In the meantime, we are interested in receiving comments on whether the record supports an EC PEL without regard to any conversion factor, the appropriate conversion factor if one is used, and any other scientific approaches for converting the existing TC limit to an appropriate EC limit.* However, if a rulemaking to establish a conversion factor is not complete before January 20, 2007, we are considering

using the current 1.3 conversion factor that we used to establish the interim DPM PEL of 308 EC micrograms to convert the phased-in final DPM TC limits to EC equivalents. As we did with the interim TC limit pursuant to the July 2002 settlement, we would use the EC equivalents as a check to validate that an overexposure is not the result of interferences. *We are interested in receiving comments on this approach to enforcement of the 2007 PEL, assuming the conversion factor rulemaking is not completed before January 20, 2007.*

VI. Economic Feasibility

In January 2001, we estimated that yearly cost of the final rule would be about 0.67% of yearly industry revenue, which was less than the 1% "screen" of costs relative to revenues that we use as a presumptive benchmark of economic feasibility (66 FR 5889). In this rulemaking to consider a phased-in approach to the final concentration limit of 160 TC micrograms, we intend to use the entire rulemaking record supporting the 2001 final rule and the new information gathered during the recent rulemaking to promulgate the new interim PEL. Our data in the rulemaking record established that few underground mines would experience severe economic hardship from enforcement of the interim PEL. Our subsequent enforcement data have confirmed that the interim PEL is economically feasible. In order to gain a more thorough rulemaking record, particularly in light of recent technological developments, *we request comments on the economic feasibility of the final concentration limit of 160 TC micrograms and implications of the proposed phase-in approach on the economic feasibility.*

VII. Section 101(a)(9) of the Mine Act

Section 101(a)(9) of the Mine Act provides that: "No mandatory health or safety standard promulgated under this title shall reduce the protection afforded miners by an existing mandatory health or safety standard." We interpret this provision of the Mine Act to require that all of the health or safety benefits resulting from a new standard be at least equivalent to all of the health or safety benefits resulting from the existing standard when the two sets of benefits are evaluated as a whole. The U.S. Court of Appeals for the D.C. Circuit approved such a "net effects" application of Section 101(a)(9). *Int'l Union, UMWA v. Federal Mine Safety and Health Admin.*, 407 F. 3d 1250, 1256–57 (DC Cir. 2005).

We have tentatively concluded at this point that this proposed phase-in period of the effective date of existing

§ 57.5060(b) of the 2001 final rule establishing a final DPM concentration limit of 160_{TC} µg/m³ will not reduce miner protection. We are concerned that the final concentration limit may be infeasible for the mining industry in January 2006. Feasibility issues with respect to operator compliance are discussed above. Also, an additional concern is whether an effective sampling strategy exists to enforce the final TC concentration limits with TC as the surrogate. Evidence in the rulemaking record after January 2001 suggests that, in many cases, there is no practical sampling strategy that would adequately remove organic carbon interferences that occur when TC is used as the surrogate. Furthermore, the DPM settlement agreement does not address appropriate enforcement procedures for the final concentration limit. We also believe at this time that the 1.3 conversion factor used for the final interim limit may not be appropriate for substantially lower limits, such as the final TC concentration limit of 160_{TC} µg/m³. Thus, we have concluded at this time that it is questionable whether the final concentration limit of 160_{TC} µg/m³ would provide any more protection for miners than the 308_{EC} µg/m³ interim limit. We have the burden of proof to confirm that an overexposure to DPM actually occurred and the sample result is not due to interferences. If we were to enforce the final DPM concentration limit of 160_{TC} µg/m³, we would need to validate a TC sample result, which cannot be done without an appropriate conversion factor for EC.

We request comments on whether a five-year phase-in period for lowering the final concentration limit to 160_{TC} µg/m³ complies with Section 101(a)(9) of the Mine Act.

VIII. Section-by-Section Discussion of the Proposed Rule

A. Section 57.5060(b)

Section 57.5060(b) in the 2001 rule established a final concentration limit of 160_{TC} µg/m³ to become effective after January 19, 2006. In this rulemaking, we propose to stagger the effective dates for implementation of the final DPM limit, phased-in over a five year period. In a separate rulemaking, we will propose changing the phased-in limits from TC to EC. As previously discussed in Section IV, Technological Feasibility, issues have surfaced since promulgation of the 2001 final rule that indicate the mining industry, taken as a whole, may need additional time to address implementation issues. We are still committed to ensuring that mine

operators continue the significant progress they have already demonstrated in reducing miners' exposures to DPM. As a first step in revising the final concentration limit, we are proposing the interim PEL of 308 micrograms to remain in effect until January 20, 2007, based on feasibility concerns with respect to compliance and sampling strategy discussed above. *MSHA is interested in whether the mining community believes at this time that a reduction, after that date, of the PEL equivalent by 50_{TC} µg/m³ each year from 400_{TC} µg/m³, is feasible and will provide additional time for the implementation of controls and development of distribution systems for alternative fuels. We also request information and comments on mining industry current experiences with feasibility of compliance with a limit lower than the current interim PEL of 308 µg/m³ of elemental carbon (EC).*

The proposed rule would establish the existing interim PEL of 308_{TC} µg/m³ as the new final PEL for one year until January 20, 2007, and impose limits that are reduced by what we will determine in a separate rulemaking to be the equivalent of 50 micrograms of total carbon from 400_{TC} µg/m³ each succeeding year until the final PEL of 160_{TC} µg/m³ is reached in 2011. Consistent with the 2005 final rule on the interim limit, we propose to change the final limit from a concentration limit to a PEL. *We request comments on whether five years is the correct timeframe for reducing miners' exposures to the 160 micrograms of TC as originally established in the 2001 standard and to have been effective in January 2006. Also, we request information on whether the proposed annual 50 microgram reductions of the final DPM limit are appropriate or, in the alternative, should the final rule include an approach such as one or two reductions.*

We intend that the provisions regarding extensions of time in which to meet the final concentration limit pursuant to existing § 57.5060(c) would apply to the limits established in proposed § 57.5060(b) effective January 20, 2006. If a mine requires additional time to come into compliance with the revised limit of 308 EC for the first year as in proposed § 57.5060(b)(1) or with the final DPM limit established in any other paragraph of proposed § 57.5060(b) due to technological or economic constraints, the operator of the mine could file an application with our District Manager for a special extension. *We request your comments on the impact of granting extensions for*

compliance with exposure limits that are greater than the 160 TC final limit.

We intend to cite a violation of the DPM exposure limit only when we have solid evidence that a violation actually occurred. Accordingly, we would continue to determine that an overexposure has occurred when a sample exceeds the interim limit using an appropriate error factor. The appropriate error factor would be slightly different for each of the reduced PELs. Our error factor model accounts for both intra- and inter-laboratory analytical variability and combines that variability with variability in pump flow rate and other sampling and analytic variables. The appropriate error factors will be based on the same statistically sound paired-punch database as used for the existing exposure limit. When developed, they will be further discussed on our Web site at <http://www.msha.gov> under, "Single Source Page for Metal and Nonmetal Diesel Particulate Matter Regulations."

B. Effect of Eliminating § 57.5060(c)(3)(i)

The 2001 final rule included a requirement at § 57.5060(c)(3)(i) specifying that applications for a one-year special extension in which to comply with the final DPM concentration limit of 160 micrograms of TC include information adequate for the Secretary to ascertain that diesel-powered equipment was used in the subject mine prior to October 29, 1998. In our 2005 rule addressing the interim limit, we revised the extension provisions, but we retained the October 29, 1998 factor for our District Manager to consider in granting extensions. The basis for limiting special extensions to underground mines that operated diesel-powered equipment prior to October 29, 1998 was that we released our NPRM of our 2001 final rule on that date. We reasoned that some mines in operation prior to that date could experience compliance difficulties relating to such factors as the basic mine design, use of older equipment with high DPM emissions, etc., and that as a result, some of these mines may require additional time to attain compliance with the final DPM limit. Also, we envisioned that mines opened after that date would be using cleaner engines that would greatly benefit them in complying with the 2001 final concentration limit. Now, we believe that our assumptions were incorrect.

We now believe that it is unnecessary to limit the application of extensions to mines operating diesel equipment prior to October 29, 1998, because under current § 57.5060(c), it is voluntary as to whether a mine operator applies for a

special extension. Extensions involve paperwork which result in a document that a mine operator can rely on for one year (renewable) to show our inspectors that we have determined that it is technologically or economically infeasible at this time for that particular mine operator to achieve compliance with the final limit using engineering and administrative controls. If their miners are wearing respirators, they are in compliance and no citation is issued. This is exactly the same test and the same result under § 57.5060(d) at mines without a formal extension. Under the current rule, mine operators must use all feasible engineering and administrative controls to achieve compliance. If we determine that reaching the final limit is infeasible for technological or economic reasons, and over-exposed miners are in respirators, the operator is deemed to be in compliance and no citation is issued. We will periodically check to determine current DPM exposures and the ability of the mine operator to implement new control technology.

We request comments on the benefits of current § 57.5060(c)(3)(i), and the effects of deleting the requirement, along with the number of miners that would be affected if § 57.5060(c)(3)(i) were eliminated. We also request comments on whether the elimination of § 57.5060(c)(3)(i) would result in a reduction in the current level of health protection afforded to miners.

IX. Medical Evaluation and Transfer

We believe that the phase-in approach of this proposed rule for ultimately reducing miners' exposures to 160 micrograms of total carbon will resolve many of the existing feasibility issues related to effectively implementing more engineering and administrative controls in metal and nonmetal underground mines to enhance miners' health. Consequently, fewer miners would be required to wear a respirator to supplement feasible engineering and administrative controls. Whereas most mines can feasibly comply with the existing DPM interim PEL of 308 micrograms of elemental carbon, we expect that some miners will continue to have to wear respirators. With each lower limit, more miners may have to wear respirators for longer time periods until controls become feasible. In the event that miners cannot wear a respirator, existing § 57.5060(d) allows for the use of an air purifying respirator, such as those that are integrated into a hardhat. We believe that such respirators are an effective option under the interim PEL for persons who cannot wear a negative-pressure respirator.

We are interested in comments from the mining community on whether we should include in the final rule, pursuant to Section 101(a)(7) of the Mine Act, a provision requiring a medical evaluation to determine a miner's ability to use a respirator before the miner is fit tested or required to work in an area of the mine where respiratory protection must be used under the final limits. In addition, we are seeking comments on whether the final rule should contain a requirement for transfer of a miner to an area of the mine where respiratory protection is not required if a medical professional has determined in the medical evaluation that the miner is unable to wear a respirator for medical reasons.

Currently, our standards do not require medical transfer of metal and nonmetal miners. *We are interested in whether the public believes that we should amend the existing respiratory protection requirement at § 57.5060(d) by adding new paragraphs (d)(3) and (d)(4) that would address medical evaluation and transfer rights for miners. We particularly want to know if the final rule should include the following language:*

(3) The mine operator must provide a medical evaluation, at no cost to the miner, to determine the miner's ability to use a respirator before the miner is fit tested or required to use the respirator to work at the mine.

(4) Upon notification from the medical professional that a miner's medical examination shows evidence that the miner is unable to wear a respirator, the miner must be transferred to work in an existing position in an area of the same mine where respiratory protection is not required.

(i) The miner must continue to receive compensation at no less than the regular rate of pay in the classification held by that miner immediately prior to the transfer.

(ii) The miner must receive wage increases based upon the new work classification.

We also solicit comments from the public as to whether a transfer provision in the final rule should address issues of notification to the District Manager of the health professional's evaluation and the fact that a miner will be transferred; the appropriate timeframe within which the transfer must be made; whether a record of the medical evaluation conducted for each miner should be maintained along with the correct retention period; medical confidentiality; and any other relevant issues such as costs to mine operators for implementing a rule requiring medical evaluations and transfer of miners.

We preliminarily estimate that medical evaluation and transfer requirements, as described above in

proposed § 57.5060(d)(3) and (3)(4), would affect about 50 miners annually for evaluation, about 3 miners annually for transfer, and cost about \$40,000 annually.

X. Regulatory Impact Analysis

A. Executive Order 12866

Executive Order 12866 requires regulatory agencies to assess both the costs and benefits of regulations. In making this assessment, we determined that this final rule will not have an annual effect of \$100 million or more on the economy, and therefore is not an economically significant regulatory action as defined by § 3(f)(1) of E.O. 12866.

B. Costs

In Chapter IV of the Regulatory Economic Analysis in support of the January 19, 2001 final rule (2001 REA), we estimated total yearly costs to underground M/NM mines for the DPM final rule of \$25,149,179 (p. 106). Of this amount, \$6,612,464 was the discounted incremental yearly cost of compliance with the final limit. The undiscounted incremental yearly cost for compliance with the final limit was estimated as \$9,274,325 (p. 58).¹

This proposed rule would amend the January 19, 2001 final DPM rule by phasing in the 160_{TC} µg/m³ final limit over a five-year period to address technological feasibility constraints that have arisen. The discounted present value of the cost saving from this five-year phase-in period would be

\$25,512,045, if compliance with the 160_{TC} µg/m³ final limit were technologically feasible in 2006. The annualized value of this cost saving, using a discount rate of 7%, would be \$1,785,843. Table X-1 shows these calculations and also shows the breakdown of these cost savings by mine size.

During the 4½ years since the 2001 final rule was promulgated, the mining industry and MSHA have gained considerable experience with the implementation, use, and cost of DPM control technology, which could result in cost changes. Therefore, *we solicit public comment concerning the cost of compliance, including any changes in costs that may have occurred since the 2001 REA.*

Table X-1. Incremental Yearly Cost of 160_{TC} µg/m³ Final Limit Relative to 400_{TC} (308_{EC}) µg/m³ Interim Limit & Projected Cost Savings from Proposed 5-year Phase-In of 160_{TC} µg/m³ Final Limit

| Year | Yearly Costs of No Phase-In | TC Limit (µg/m ³) | Percent of Phase-In | Yearly Costs of Phase-In | Yearly Cost Saving | Discount Factor | Discounted Cost Saving |
|--|-----------------------------|-------------------------------|---------------------|--------------------------|--------------------|-----------------|------------------------|
| 2006 | \$9,274,325 | 400 | 0% | \$0 | \$9,274,325 | 1.0000 | \$9,274,325 |
| 2007 | \$9,274,325 | 350 | 20% | \$1,854,865 | \$7,419,460 | 0.9346 | \$6,934,075 |
| 2008 | \$9,274,325 | 300 | 40% | \$3,709,730 | \$5,564,595 | 0.8734 | \$4,860,333 |
| 2009 | \$9,274,325 | 250 | 60% | \$5,564,595 | \$3,709,730 | 0.8163 | \$3,028,245 |
| 2010 | \$9,274,325 | 200 | 80% | \$7,419,460 | \$1,854,865 | 0.7629 | \$1,415,068 |
| 2011 | \$9,274,325 | 160 | 100% | \$9,274,325 | \$0 | 0.7130 | \$0 |
| 2012 | \$9,274,325 | 160 | 100% | \$9,274,325 | \$0 | 0.6663 | \$0 |
| 2013 | \$9,274,325 | 160 | 100% | \$9,274,325 | \$0 | 0.6227 | \$0 |
| 2014 | \$9,274,325 | 160 | 100% | \$9,274,325 | \$0 | 0.5820 | \$0 |
| 2015 | \$9,274,325 | 160 | 100% | \$9,274,325 | \$0 | 0.5439 | \$0 |
| Sum of Discounted Cost Savings: | | | | | | | \$25,512,045 |
| Annualized Value of Cost Savings (Mines with over 500 employees): | | | | | | | \$164,972 |
| Annualized Value of Cost Savings (Mines with 20 to 500 Employees): | | | | | | | \$1,156,122 |
| Annualized Value of Cost Savings (Mines with under 20 Employees): | | | | | | | \$464,746 |
| Annualized Value of Cost Savings (All Underground M/NM Mines): | | | | | | | \$1,785,843 |

C. Benefits

In Chapter III of the Regulatory Economic Analysis in support of the January 19, 2001 final rule (2001 REA), we demonstrated that the DPM final rule for M/NM mines will reduce a significant health risk to underground miners. This risk included the potential for illnesses and premature death, as well as the attendant costs of the risk to

the miners' families, to the miners' employers, and to society at large.

We have incorporated into this rulemaking record the previous DPM rulemaking records, including the risk assessment to the January 19, 2001 standard. Benefits of the January 19, 2001 final rule include continued reductions in lung cancers. In the long run, as the mining population turns over, we estimated that a minimum of

8.5 lung cancer deaths will be avoided per year. We noted that this estimate was a lower bound figure that could significantly underestimate the magnitude of the health benefits. For example, the estimate based on the mean value of all the quantitative estimates examined in the January 19, 2001 final rule was 49 lung cancer deaths avoided per year.

¹ The following section, discussing benefits of the proposed rule, notes that MSHA's original estimate, in 2001, of the benefits of the final limit assumed that mean miner exposure to DPM was larger than

that observed in subsequent sampling of baseline and current DPM concentrations experienced by underground M/NM miners. To the extent that benefits were accordingly overestimated in 2001,

we expect that the 2001 estimates of cost impacts may have been inflated similarly.

Other benefits noted in the 2001 REA were reductions in the risk of premature death from cardiovascular, cardiopulmonary, or respiratory causes and reductions in the risk of sensory irritation and respiratory symptoms. However, we did not include these health benefits in its estimates because we could not make reliable or precise quantitative estimates of them. Nevertheless, we noted that the expected reductions in the risk of death from cardiovascular, cardiopulmonary, or respiratory causes and the expected reductions in the risk of sensory irritation and respiratory symptoms are likely to be substantial. *You are encouraged to submit additional evidence of new scientific data related to the health risk to underground metal and nonmetal miners from exposure to DPM.*

The 2001 risk assessment used the best available data on DPM exposures at underground M/NM mines to quantify excess lung cancer risk. "Excess risk" refers to the lifetime probability of dying from lung cancer during or after a 45-year occupational DPM exposure. This probability is expressed as the expected excess number of lung cancer deaths per thousand miners occupationally exposed to DPM at a specified mean DPM concentration. The excess is calculated relative to baseline, age-specific lung cancer mortality rates taken from standard mortality tables. In order to properly estimate this excess, it is necessary to calculate, at each year of life after occupational exposure begins, the expected number of persons surviving to that age with and without DPM exposure at the specified level. At each age, standard actuarial adjustments must be made in the number of

survivors to account for the risk of dying from causes other than lung cancer. Occupational exposure is assumed to begin at age 20 and to continue, for surviving miners, until retirement at age 65. The accumulation of lifetime excess risk continues after retirement through the age of 85 years.

Table X-2, taken from the 2001 risk assessment, shows a range of excess lung cancer estimates at mean exposures equal to the interim and final DPM limits. The eight exposure-response models employed were based on studies by Säverin *et al.* (1999), Johnston *et al.* (1997), and Steenland *et al.* (1998). Assuming that TC is 80 percent of whole DPM, and that the mean ratio of TC to EC is 1.3, the interim DPM limit of 500 µg/m³ shown in Table X-2 corresponds to the 308 µg/m³ EC surrogate limit adopted under the June 6, 2005 rulemaking.

TABLE X-2.—EXCESS LUNG CANCER RISK EXPECTED AT SPECIFIED DPM EXPOSURE LEVELS OVER AN OCCUPATIONAL LIFETIME (EXTRACTED FROM TABLE III-7 OF THE 2001 RISK ASSESSMENT).

| Study and statistical model | Excess lung cancer deaths per 1000 occupationally exposed workers † | |
|--|---|---|
| | Final DPM limit 200 µg/m ³ | Interim DPM limit 500 µg/m ³ |
| Säverin <i>et al.</i> (1999) | | |
| Poisson, full cohort | 15 | 44 |
| Cox, full cohort | 70 | 280 |
| Poisson, subcohort | 93 | 391 |
| Cox, subcohort | 182 | 677 |
| Steenland <i>et al.</i> (1998) | | |
| 5-year lag, log of cumulative exposure | 67 | 89 |
| 5-year lag, simple cumulative exposure | 159 | 620 |
| Johnston <i>et al.</i> (1997) | | |
| 15-year lag, mine-adjusted | 313 | 724 |
| 15-year lag, mine-unadjusted | 513 | 783 |

† Assumes 45-year occupational exposure at 1920 hours per year from age 20 to retirement at age 65. Lifetime risk of lung cancer adjusted for competing risk of death from other causes and calculated through age 85. Baseline lung cancer and overall mortality rates from NCHS (1996).

As explained in the June 6, 2005 final rule, the mean DPM concentration levels estimated from both the 31-Mine Study (432–492 µg/m³, depending on whether trona mines are included) and the baseline samples (~320 µg/m³) fall between the interim and final DPM limits shown in Table X-2. All of the exposure-response models shown are monotonic (*i.e.*, increased exposure yields increased excess risk, though not proportionately so). Therefore, using the most current available estimates of mean exposure levels, they all predict excess lung cancer risks somewhere between those shown for the interim and final limits. Thus, despite substantial improvements apparently attained since the 1989–1999 sampling period addressed by the 2001 risk assessment, underground M/NM miners

are still faced with an unacceptable risk of lung cancer due to their occupational DPM exposures.

Another principal conclusion of the 2001 risk assessment was:

By reducing DPM concentrations in underground mines, the rule will substantially reduce the risks of material impairment faced by underground miners exposed to DPM at current levels.

Although DPM levels have apparently declined since 1889–1999, MSHA expects that further improvements will continue to significantly and substantially reduce the health risks identified for miners. There is clear evidence of DPM's adverse health effects, not only at pre-2001 levels but also at the generally lower levels currently observed at many

underground mines. These effects are material health impairments as specified under § 101(a)(6)(A) of the Mine Act. From the recent enforcement sample results, 135 out of the 183 mines (73.8%) had at least one sample exceeding the final exposure limit. Because the exposure-response relationships shown in Table X-2 are monotonic, MSHA expects that industry-wide implementation of the interim limit will significantly reduce the risk of lung cancer among miners.

This proposed rule would amend the January 19, 2001 final DPM rule by phasing in the final limit over a five-year period to address technological feasibility constraints that have arisen. By addressing the technological feasibility issues in this way, this proposed rule would contribute to the

realization of the benefits mentioned above.

XI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires regulatory agencies to consider a rule's economic impact on small entities. Under the RFA, we must use the Small Business Act definition of a small business concern in determining a rule's economic impact unless, after consultation with the SBA Office of Advocacy, and after opportunity for public comment, we establish a definition which is appropriate to our

activities and publish that definition in the **Federal Register**. For the mining industry, SBA defines "small" as having 500 or fewer workers. We have traditionally considered small mines to be those with fewer than 20 workers.

To ensure that the rule conforms to the RFA, we analyzed the economic impact on mines with 500 or fewer workers and also on mines with fewer than 20 workers. In Chapter V of the 2001 REA we estimated yearly revenues for these mine sizes. In Table X-1 of this preamble, we estimate the cost savings to mines of various employment sizes. In Table XI-1 of this preamble we

combine these numbers and calculate cost savings as a percentage of revenues. Cost savings are 0.25% of revenues for mines with fewer than 20 employees and 0.06% of revenues for mines with 500 or fewer employees. Since both cost savings calculations are less than one percent of revenues, there is no need to conduct an initial regulatory flexibility analysis. *We solicit public comment concerning the accuracy of these cost estimates.*

We certify that the rule will not have a significant economic impact on a substantial number of small entities under either definition.

Table XI-1. Estimated Yearly Cost Savings of Proposed Rule Relative to Yearly Revenues For Underground M/NM Mines That Use Diesel-Powered Equipment

| Mine Size | Proposed Rule Yearly Cost Savings | Yearly Revenues | Cost Savings as Percentage of Revenues |
|-------------------------|-----------------------------------|-----------------|--|
| Fewer than 20 Employees | \$464,746 | \$189,305,000 | 0.25% |
| 500 or Fewer Employees | \$1,620,869 | \$2,745,137,000 | 0.06% |

XII. Paperwork Reduction Act

There are no paperwork provisions in this proposed rule.

XIII. Other Regulatory Considerations

A. National Environmental Policy Act of 1969

We have reviewed this proposed rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 U.S.C. part 1500), and the Department of Labor's NEPA procedures (29 CFR part 11).

This proposed rule would have no significant impact on air, water, or soil quality; plant or animal life; the use of land; or other aspects of the human environment. As a result of this environmental assessment, we find that the proposed rule would have no significant impact on the human environment. Accordingly, we have not provided an environmental impact statement. *We solicit public comment concerning the accuracy and completeness of this environmental assessment.*

B. The Unfunded Mandates Reform Act of 1995

This proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, nor would it

increase private sector expenditures by more than \$100 million annually, nor would it significantly or uniquely affect small governments. Accordingly, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) requires no further agency action or analysis.

C. The Treasury and General Government Appropriations Act of 1999: Assessment of Federal Regulations and Policies on Families

This proposed rule would have no affect on family well-being or stability, marital commitment, parental rights or authority, or income or poverty of families and children. Accordingly, Section 654 of the Treasury and General Government Appropriations Act of 1999 (5 U.S.C. 601 note) requires no further agency action, analysis, or assessment.

D. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not implement a policy with takings implications. Accordingly, Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, requires no further agency action or analysis.

E. Executive Order 12988: Civil Justice Reform

This proposed rule was written to provide a clear legal standard for affected conduct and was carefully reviewed to eliminate drafting errors and ambiguities, so as to minimize litigation and undue burden on the Federal court system. Accordingly, this proposed rule would meet the applicable standards provided in Section 3 of Executive Order 12988, Civil Justice Reform.

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

This proposed rule would have no adverse impact on children. Accordingly, Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, as amended by Executive Orders 13229 and 13296, requires no further agency action or analysis.

G. Executive Order 13132: Federalism

This proposed rule would not have "federalism implications," because it would 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." Accordingly, Executive Order 13132,

Federalism, requires no further agency action or analysis.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed rule would not have “tribal implications,” because it would 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.” Accordingly, Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires no further agency action or analysis.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Regulation of the metal/nonmetal sector of the mining industry has no significant impact on the supply, distribution, or use of energy. This proposed rule is not a “significant energy action,” because it would not be “likely to have a significant adverse effect on the supply, distribution, or use of energy * * * (including a shortfall in supply, price increases, and increased use of foreign supplies).” Accordingly, Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, requires no further agency action or analysis.

J. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

We have thoroughly reviewed this proposed rule to assess and take

appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in Section XI of this preamble, we have determined and certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking, requires no further agency action or analysis.

XIV. Proposed Rule Text

List of Subjects in 30 CFR Part 57

Diesel particulate matter, Metal and nonmetal, Mine safety and health, Underground miners.

Dated: September 1, 2005.

David G. Dye,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

For reasons set forth in the preamble, we propose to amend Chapter 1 of Title 30 as follows:

PART —57 [AMENDED]

1. The authority citation for part 57 reads follows:

Authority: 30 U.S.C. 811

2. Section 57.5060 is amended by revising paragraph (b) and removing paragraph (c)(3)(i) to read as follows:

§ 57.5060 Limit on exposure to diesel particulate matter.

* * * * *

(b)(1) Effective January 20, 2006, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 308

micrograms of elemental carbon per cubic meter of air (308_{EC} µg/m³).

(2) Effective January 20, 2007, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 350 micrograms of total carbon per cubic meter of air (350_{TC} µg/m³).

(3) Effective January 20, 2008, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 300 micrograms of total carbon per cubic meter of air (300_{TC} µg/m³).

(4) Effective January 20, 2009, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 250 micrograms of total carbon per cubic meter of air (250_{TC} µg/m³).

(5) Effective January 20, 2010, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 200 micrograms of total carbon per cubic meter of air (200_{TC} µg/m³).

(6) Effective January 20, 2011, a miner’s personal exposure to diesel particulate matter (DPM) in an underground mine must not exceed an average eight-hour equivalent full shift airborne concentration of 160 micrograms of total carbon per cubic meter of air (160_{TC} µg/m³).

* * * * *

[FR Doc. 05–17802 Filed 9–6–05; 8:45 am]

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