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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1216

[FV–05–701–IFR]

Amendment to the Peanut Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The purpose of this rule is to bring the provisions of the Peanut Promotion, Research and Information Order (Order), into conformity with changes that have occurred since the implementation of the Order with regard to the collection of assessments. This order is issued under the authority of the Commodity Promotion, Research and Information Act of 1996. This rule invites comments on changes to the Order provisions on assessments and the deletion of a number of obsolete definitions.

DATES: September 22, 2005; comments received by October 21, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Washington, DC 20250–0237; Fax: (202) 205–2800, or E-mail:*deborah.simmons@usda.gov;* or Internet: *http://www.regulations.gov.* All comments should reference the docket number, the date and the page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http//www.ams.usda.gov/fv/rpb.html.*

FOR FURTHER INFORMATION CONTACT: Deborah S. Simmons, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535 South Building, Washington, D.C. 20250–0244; telephone (202) 720–9916 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: Legal Authority. The Peanut Promotion, Research and Information Order (Order) (7 CFR Part 1216) became effective July 29, 1999. It was issued under the Commodity Promotion, Research, and Information Act of 1996 (Act) (7 U.S.C. 7401–7425).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any State or local laws authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency has examined the impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 13,000 producers and 57 first handlers of peanuts subject to the program. Most of the producers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. Most first handlers would not be classified as small businesses. The SBA defines small agricultural handlers as those whose annual receipts are less than $6 million, and small agricultural producers are defined as those having annual receipts of not more than $500,000 annually.

A number of changes have occurred to Farm Service Agency loan programs for peanuts since the 2002 Farm Bill. In view of this, several provisions of the Order needed to be updated. The changes are to the collection process for assessments, Section 1216.51 of the Order as amended. This section included provisions concerning collection of assessments and peanuts placed under marketing assistance loans. The Commodity Credit Corporation will deduct and remit to the Board assessments deducted from the proceeds of the loan. Producers are also required to pay assessments directly to the Board in certain circumstances.

This rule, however, does not alter the amount of the assessment or the obligation of producers of peanuts to pay the assessment.

Additional changes are made to amend definitions and delete definitions that are no longer needed. Accordingly, § 1216.2 concerning additional peanuts, § 1216.3 concerning area marketing associations, § 1216.6 concerning contract export additional peanuts, and § 1216.24 concerning quota peanuts are deleted.

There are no relevant federal rules that duplicate, overlap, or conflict with the proposed rule.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by the Order have been approved previously under OMB control number 0581–0093. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed amendment to the Order on small entities, and we invite comments concerning potential effects of the proposed amendment.

Background

The Order became effective on July 29, 1999, after a national referendum among all peanut producers. Under the Order, peanut producers are assessed 1 percent of the total value of all farmers stock peanuts, which currently generates about $6 million in annual revenues. The program is administered by the Board under USDA supervision.

The Board is composed of 10 members and 10 alternates, nominated by producers and appointed by the Secretary of Agriculture. There is one member and alternate for each of the nine primary peanut-producing states and one at-large member and alternate representing all other peanut-producing states.

Currently, the nine major peanut-producing states are (in descending order) Georgia, Texas, Alabama, North Carolina, Florida, Virginia, Oklahoma, New Mexico, and South Carolina. The minor peanut-producing states are Arizona, Arkansas, California, Kansas, Louisiana, Mississippi, Missouri, and Tennessee.

There is an assessment rate of 1 percent of the price paid for all farmers stock peanuts sold. Peanut producers may sell their peanuts commercially or put them in the market assistance loan program. For peanuts sold commercially, the first handler will remit the assessment to the Board.

Further § 1216.51(d) currently provides that for peanuts placed under loan with the Department's Commodity Credit Corporation, each area marketing association shall remit to the Board the following: (1) One (1) percent of the initial price paid for either quota or additional peanuts no more than 60 days after the last day of the month in which the peanuts were placed under loan; and (2) One (1) percent of the profit from the sale of the peanuts within 60 days after the final day of the area marketing association's fiscal year.

A number of changes have occurred to Farm Service Agency loan program for peanuts since the 2002 Farm Bill. In view of this, the Board submitted a request to amend the Order to update the collection of assessments for all peanuts, including loan peanuts. This rule does not alter the amount of the assessment or the obligation of producers of peanuts to pay the assessment.

This rule does provide in § 1216.51 (d) that for peanuts placed under a marketing assistance loan with the Department's Commodity Credit Corporation, the Commodity Credit Corporation or any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, (1) one (1%) percent of the loan value of the peanuts as determined by the warehouse receipt accompanying such peanuts, no more than 60 days after the last day of the month in which the peanuts were placed under a marketing assistance loan.

This rule also provides in § 1216.51(e) that if a producer places peanuts under a marketing assistance loan and subsequently redeems and sells such peanuts at a price greater than the loan amount, the producer shall pay the difference between the sales price and the loan amount value of the peanuts multiplied by one (1%) percent to the Board within sixty (60) days of the date of sale.

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR Part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], the information collection and recordkeeping requirements that are imposed by this Order were submitted to OMB for approval and were approved under OMB control number 0581–0093. This proposal will not cause any change in the information collection and recordkeeping requirement.

Additional changes are made to amend definitions and delete definitions that are no longer needed. Accordingly, § 1216.2 concerning additional peanuts, § 1216.3 concerning area marketing associations, § 1216.6 concerning contract export additional peanuts, and § 1216.24 concerning quota peanuts are deleted.

This rule invites comments on the amendment to the collection process set forth in the Order and on the deletion of § 1216.2, § 1216.3, § 1216.6 and § 1216.24. Any comments received before the October 21, 2005 will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The crop year began on August 1, 2005 and this action should be in place as soon as possible and (2) this notice does not alter the amount of assessment but only changes provisions concerning the collection of assessment. For these reasons, a thirty-day comment period is deemed appropriate.

General Findings

List of Subjects in 7 CFR Part 1216

Administrative practice and procedure; Advertising; Agricultural research; Peanuts; Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, Title 7 of Chapter XI of the Code of Federal Regulations is amended as follows:

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 1. The authority citation for part 1216 continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

§§ 1216.2, 1216.3, 1216.6, 1216.24 [Removed and reserved]

■ 2. Sections 1216.2, 1216.3, 1216.6 and 1216.24 are removed and reserved.

■ 3. Section 1216.51 is revised to read as follows:

§ 1216.51 Assessments.

(a) The funds necessary to pay for programs and other costs authorized by this part shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer or first purchaser/handler and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of one (1%) percent of the price paid for all farmers stock peanuts sold. Price paid is one (1%) percent of loan value.

(d) For peanuts placed under a marketing assistance loan with the

Department's Commodity Credit Corporation, the Commodity Credit Corporation, or any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, one (1%) percent of the loan value of the peanuts as determined by the warehouse receipt accompanying such peanuts, no more than 60 days after the last day of the month in which the peanuts were placed under a marketing assistance loan.

(e) If a producer places peanuts under a marketing assistance loan and subsequently redeems and sells such peanuts at a price greater than the loan amount, the producer shall pay the difference between the sales price and the loan value of the peanuts multiplied by one (1%) percent to the Board within sixty (60) days after the final day of the loan availability period.

(f) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(g) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(j) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

Dated: September 15, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–18759 Filed 9–20–05; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Audit Requirement for Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its rule concerning credit union service organizations (CUSOs) to provide that a wholly owned CUSO need not obtain its own annual financial statement audit from a certified public accountant if it is included in the annual consolidated audit of the federal credit union (FCU) that is its parent. The amendment will reduce regulatory burden and conform the regulation with agency practice, which since 1997 has been to view credit unions with wholly owned CUSOs in compliance with the rule if the parent FCU has obtained an annual financial statement audit on a consolidated basis.

DATES: This rule is effective on October 21, 2005.

FOR FURTHER INFORMATION CONTACT: Ross P. Kendall, Staff Attorney, Office of General Counsel, at telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

On March 17, 2005, the NCUA Board requested comment on a proposed change to part 712 of its regulations to provide that that a CUSO that is wholly owned need not secure its own public accounting firm financial statement audit if it is included on a consolidated basis in the audit of the FCU itself. 70 FR 14579 (March 23, 2005). The proposal recognized that, where a CUSO is controlled by an FCU by virtue of its ownership of one hundred percent of its voting shares, generally accepted accounting principles (GAAP) call for the preparation of financial statements of both the FCU and the CUSO on a consolidated basis.

As noted in the preamble to the proposed rule, consolidated financial statements present the results of operations, financial position, and cash flows of a parent and its subsidiaries as if the group were a single enterprise. Under GAAP, consolidated financial statements generally include enterprises in which the parent has a controlling financial interest, usually, a majority voting interest. There is a presumption that consolidated statements are more meaningful than separate statements and are usually necessary for a fair presentation when one of the enterprises in a group directly or indirectly has a controlling financial interest in another.

Summary of Comments

NCUA received twelve comments on the proposal, eleven of which were fully supportive of the amendment. These commenters noted several bases for their support, including efficiency, flexibility and cost savings, as well as the generally more thorough and accurate financial picture that emerges when the operations of corporate parents and subsidiaries are included in a consolidated financial statement. The one commenter that did not offer express support did not indicate opposition to the proposal, but rather raised two questions about the operation of the rule in specified circumstances.

In the preamble to the proposed rule, the Board specifically recognized that GAAP would allow for consolidated financial reporting in cases that involve a CUSO that is majority owned. The Board noted, however, that it was not recommending extension of the rule to those cases, and indicated its belief that the proposal would ensure that prospective minority investors in CUSOs would have maximum disclosure of potential risks to their investment. Nine commenters recommended that NCUA extend the exemption for a separate audit to majority owned CUSOs, instead of limiting it to cases of one hundred percent ownership. Two of these commenters conditioned their support for this expanded treatment on including in the rule a safeguard to allow a minority owner to request the CUSO to obtain a separate opinion audit.

The Board remains convinced that the original proposal, with its limited application only to cases involving one hundred percent ownership of the CUSO, is the best course. Absent a provision in the rule, a minority investor could encounter some difficulty in asserting its right to a separate opinion audit. The Board notes, in this respect, that its concern for the safety and soundness of credit unions, rather than assuring that its rules conform in all respects to what may be formally permissible under GAAP, is of paramount importance. Accordingly, NCUA is adopting the proposed amendments as a final rule without change.

The Board notes that the rule change extends to cases involving CUSO subsidiaries that are also wholly owned. While cases of second tier CUSOs are relatively rare, the principles of the rule

would apply. Thus, where the second tier CUSO is itself wholly owned by a wholly owned first tier CUSO, use of a consolidated opinion audit capturing both levels would be permissible.

Regulatory Procedures

Regulatory Flexibility Act

The final rule relieves a CUSO that is wholly owned from having to secure a separate opinion audit of its books, if it is included in the annual consolidated opinion audit of the credit union that is its parent. The Board has determined and certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed regulation does not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will apply only to federally-chartered credit unions. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and record keeping requirements.

By the National Credit Union Administration Board on September 15, 2005.

Mary F. Rupp,

Secretary of the Board.

■ For the reasons stated in the preamble, NCUA amends 12 CFR part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

■ 1. The authority citation for part 712 continues to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

■ 2. Amend § 712.3 by revising paragraph (d)(2) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) * * *

(2) Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the credit union that is its parent; and

* * * * *

[FR Doc. 05–18749 Filed 9–20–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21189; Directorate Identifier 2005–NM–055–AD; Amendment 39–14279; AD 2005–19–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 Series Airplanes; and Model A320–111 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 Airbus Model A318–100, A319–100, A320–200, A321–100, and A321–200 series airplanes; and Model A320–111 airplanes. This AD requires modification of the electrical bonding of all structures and systems installed inside the center fuel tank. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing in the center fuel tank due to inadequate bonding, which could result in an explosion of the center fuel tank and consequent loss of the airplane.

DATES: This AD becomes effective October 26, 2005.

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

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

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 Airbus Model A318, A319, A320, and A321 series airplanes. That NPRM was published in the **Federal Register** on May 12, 2005 (70 FR 24997). That NPRM proposed to require modification of the electrical bonding of all structures and systems installed inside the center fuel tank.

Comments

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

Support for the Proposed AD

One commenter supports the proposed AD.

Request To Consider Effect of Other Rulemaking

One commenter requests that we revise the ''Discussion'' and ''FAA's Determination and Requirements of the Proposed AD'' sections of the proposed AD to describe the relationship of the proposed AD to the NPRM on Reducing Fuel Tank Flammability (referred to after this as the ''FTF rule''), which was announced by the FAA Administrator in February 2004. The commenter notes that airplanes affected by the proposed AD are included in the applicability of the FTF NPRM. Further, the commenter expects that the unsafe condition addressed by the proposed AD would be mitigated by doing the requirements of the FTF rule, so the FTF rule would preclude the need for the proposed AD. The commenter concludes that the FAA did not consider all pertinent data when it issued the proposed AD and, consequently, the FAA's determination and requirements of the proposed AD may be flawed.

While the commenter asks for specific changes only to the preamble of the proposed AD, we infer that the commenter is requesting that we withdraw the proposed AD. We do not concur. Reducing flammability and minimizing potential ignition sources comprise the FAA's two-pronged, balanced approach to fuel tank safety. Since the introduction of turbine-powered airplanes, the FAA's primary means of protection from fuel tank explosions has been to eliminate ignition sources. The fuel tank rules are based on the assumption that fuel tanks will always contain flammable vapors. However, one of the important lessons learned as a result of the fuel tank safety reviews required by Special Federal Aviation Regulation No. 88 (''SFAR 88,'' amendment 21–78, and subsequent amendments 21–82 and 21–83) is that unanticipated failures and maintenance errors will continue to generate unexpected ignition sources. Thus, we have concluded that we are unlikely ever to identify and eradicate all possible sources of ignition.

Our balanced approach means that, while we pursue reducing flammability through efforts such as the Fuel Tank Flammability (FTF) rule, we will also continue to eliminate identified ignition sources, such as those identified as a result of the SFAR 88 fuel tank safety reviews. This AD is consistent with that effort. We have not changed the AD in this regard.

Request To Extend Compliance Time

One commenter requests that we extend the compliance time from 58 months to 72 months after the effective date of the AD. The commenter states that many operators have increased their heavy maintenance interval from 5 years to 6 years. Thus, the commenter states that increasing the compliance time to 72 months would allow for minimum disruption to its operating schedule.

We do not concur. We have determined that the 58-month compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate safely before the modification is done. In developing an appropriate compliance time for this AD, we considered, among other factors, the manufacturer's recommendation and the degree of urgency associated with the subject unsafe condition. We have not changed this AD in this regard.

Request To Increase Estimated Costs of Compliance

Two commenters request that we revise the estimated costs of compliance stated in the proposed AD. One commenter states that the service bulletin to which the proposed AD refers estimates that the modification will take 132 to 141 work hours, but the commenter's own experience indicates that the modification will take 200 to 215 work hours. The other commenter states that the service bulletin estimates the total work hours as 129 to 146.5, but it estimates up to 443 work hours (including time required for fuel tank guard personnel) will be needed.

We do not concur. The estimates of 129 to 146.5 work hours specified in the service bulletin include time for gaining access and closing up. The cost analysis in AD rulemaking actions, however, typically does not include costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs may vary significantly among operators and are almost impossible to calculate. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. However, the estimate of 49 to 64 work hours, as proposed and as specified in this AD, represents the time necessary to perform only the actions actually required by this AD. We have not changed the AD in this regard.

Explanation of Change to Applicability

The FAA has revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD affects about 506 airplanes of U.S. registry. The required actions take between 49 and 64 work hours per airplane depending on the airplane's configuration. The average labor rate is $65 per work hour. Required parts cost between $10 and $370 per airplane, depending on the airplane's configuration. Based on these figures, the estimated cost of this AD for U.S. operators is between $1,616,670 and $2,292,180, or between $3,195 and $4,530 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

Aircraft, Air transportation, 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):

2005–19–14 Airbus: Amendment 39–14279. Docket No. FAA–2005–21189; Directorate Identifier 2005–NM–055–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111 and –112 airplanes; A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and A321–111, –112, –131, –211 and –231 airplanes; certificated in any category; except airplanes that have received Airbus Modification 31892 in production.

Unsafe Condition

(d) This AD was prompted by results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent electrical arcing in the center fuel tank due to inadequate bonding, which could result in an explosion of the center fuel tank and consequent loss of the airplane.

Compliance

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

Inspection and Related Investigative and Corrective Actions

(f) Within 58 months after the effective date of this AD: Modify the electrical bonding of all structures and systems installed inside the center fuel tank by accomplishing all of the actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1104, Revision 01, dated December 8, 2004.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) Actions done before the effective date of this AD in accordance with Airbus Service Bulletin A320–28–1104, dated December 2, 2003, are acceptable for compliance with the corresponding requirements of paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, 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–2005–028, dated February 16, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A320–28–1104, Revision 01, dated December 8, 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 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 September 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18518 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21087; Directorate Identifier 2005–NM–019–AD; Amendment 39–14280; AD 2005–19–15]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. That AD currently requires operators to determine the number of flight cycles accumulated on each component of the main landing gear (MLG) and the nose landing gear (NLG), and to replace each component that reaches its life limit with a serviceable component. The existing AD also requires operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness in the aircraft maintenance manual to reflect the new life limits. This new AD requires revising the ALS to incorporate extended and more restrictive life limits for structurally significant items. This AD is prompted by engineering analysis of fleet operations which resulted in more restrictive life limits. We are issuing this AD to prevent failure of certain structurally significant items, including the MLG and the NLG, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective October 26, 2005.

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

On August 3, 2004 (69 FR 38816, June 29, 2004), the Director of the Federal Register approved the incorporation by reference of BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002; BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 3, dated January 9, 2004; and BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002.

ADDRESSES: For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–21087; the directorate identifier for this docket is 2005–NM–019–AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2004–13–07, amendment 39–13689 (69 FR 38816, June 29, 2004). The existing AD applies to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The proposed AD was published in the **Federal Register** on May 2, 2005 (70 FR 22615), to continue to require operators to determine the number of flight cycles accumulated on each component of the main landing gear (MLG) and nose landing gear (NLG), and to replace each component that reaches its life limit with a serviceable component. That action also proposed to require operators to revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness in the airplane maintenance manual (AMM) to incorporate extended and more restrictive life limits for structurally significant items.

Comments

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

Explanation of Change to Applicability

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

Explanation of Editorial Changes

We have corrected the date of Revision 3 of BAE Systems (Operations) Limited Service Bulletin J41–05–001 in paragraph (f) of this AD, and the British airworthiness directive reference in paragraph (n) of this AD.

Conclusion

We have carefully reviewed the available data, including the comment that has 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

This AD will affect about 57 airplanes of U.S. registry.

For the actions that are required by AD 2004–13–07, and retained in this AD, it will take approximately 1 work hour per airplane to accomplish the required determination of the number of flight cycles, and 1 work hour per airplane to accomplish the required revision of the AMM. The average labor rate is $65 per work hour. Based on these figures, the estimated cost of the currently required actions for U.S. operators is $7,410, or $130 per airplane.

The new revision of the AMM will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new AMM revision specified in this AD for U.S. operators is $3,705, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–13689 (69 FR 38816, June 29, 2004) and by adding the following new airworthiness directive (AD):

2005–19–15 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14280. Docket No. FAA–2005–21087; Directorate Identifier 2005–NM–019–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 2004–13–07.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model Jetstream 4101 airplanes, certificated in any category.

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

Unsafe Condition

(d) This AD was prompted by engineering analysis of fleet operations which resulted in more restrictive life limits. We are issuing this AD to prevent failure of certain structurally significant items, including the main landing gear and the nose landing gear, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2004–13–07

Determine Flight Cycles for Components

(f) Within 90 days after August 3, 2004 (the effective date of AD 2004–13–07): Determine the number of flight cycles accumulated on each landing gear component listed in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002. If there are no records or incomplete records for any component, establish the number of flight cycles in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002; or Revision 3, dated January 9, 2004.

Note 2: BAE Systems (Operations) Limited Service Bulletin J41–32–078 refers to BAE Systems (Operations) J41 Service Information Leaflet 32–15, Issue 1, dated February 15, 2002, as an additional source of service information for establishing the life limits of landing gear components and for tracking the accumulated life of each component.

Replace Components

(g) Except as provided by paragraph (h) of this AD, within 60 days after establishing the flight cycles per paragraph (f) of this AD: Replace any landing gear component that has reached the life limit determined by paragraph (f) of this AD, with a serviceable component per a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (CAA) (or its delegated agent). Doing the actions in chapter 32 of the Jetstream 4100 airplane maintenance manual (AMM) is one approved method. Thereafter, replace any component that reaches its life limit prior to the accumulation of the applicable number of flight cycles shown in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002.

(h) Any component for which the total accumulated life cycles has not been established, or that has exceeded its life limit, but has not yet been replaced per paragraph (g) of this AD, must be replaced within 72 months after August 3, 2004, in accordance with BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002.

Revise AMM

(i) Within 30 days after August 3, 2004: Revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness of the Jetstream 4100 AMM to include the life limits of the components listed in Table 1 and Table 2 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002. This may be accomplished by inserting a copy of the service bulletin into the ALS of the Instructions for Continued Airworthiness until such time as a revision is issued. Thereafter, except as provided in paragraphs (m) and (l) of this AD, no alternative replacement times may be approved for any affected component. Once the AMM revision required by paragraph (l) of this AD is accomplished, the AMM revision required by this paragraph must be removed from the AMM.

Parts Installation

(j) As of August 3, 2004, no landing gear unit may be installed on any airplane unless the accumulated flight cycles of all components of that landing gear have been established per paragraph (f) of this AD, and any component that has exceeded its life limit has been replaced per paragraph (g) of this AD.

Actions Accomplished Per Previous Issue of Service Bulletin

(k) Calculations of total accumulated flight cycles accomplished per BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 1, dated April 10, 2001; or BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

New Requirements of This AD

Revise AMM

(l) Within 30 days after the effective date of this AD: Revise the ALS of the Instructions for Continued Airworthiness of the BAE Systems (Operations) Limited J41 AMM to include the life limits of the components listed in Chapter 05–10–10, Airworthiness Limitations—Description and Operation Section, Revision 23, dated February 15, 2005, of the AMM. This may be accomplished by inserting a copy into the ALS of the Instructions for Continued Airworthiness. Thereafter, except as provided in paragraph (m) of this AD, no alternative replacement times may be approved for any affected component. Once this AMM revision is included, the AMM revision required by paragraph (i) of this AD must be removed from the AMM.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(n) British airworthiness directive G–2005–0005, dated February 3, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(o) Unless otherwise specified in this AD, the actions shall be done in accordance with the service information listed in Table 1 of this AD.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service Information	Revision level	Date
BAE Systems (Operations) Limited J41 Airplane Maintenance Manual	Revision 23	February 15, 2005.
BAE Systems (Operations) Limited Service Bulletin J41–05–001	Revision 2	March 15, 2002.
BAE Systems (Operations) Limited Service Bulletin J41–05–001	Revision 3	January 9, 2004.
BAE Systems (Operations) Limited Service Bulletin J41–32–078	Original	April 12, 2002.

(1) The Director of the Federal Register approves the incorporation by reference of Chapter 05–10–10 of the BAE Systems (Operations) Limited J41 Airplane Maintenance Manual, Revision 23, dated February 15, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On August 3, 2004 (69 FR 38816, June 29, 2004), the Director of the Federal Register approved the incorporation by reference of BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 2, dated March 15, 2002; BAE Systems (Operations) Limited Service Bulletin J41–05–001, Revision 3, dated January 9, 2004; and BAE Systems (Operations) Limited Service Bulletin J41–32–078, dated April 12, 2002.

(3) To get copies of the service information, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. 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 September 9, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18519 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21861; Directorate Identifier 2005–NM–093–AD; Amendment 39–14281; AD 2005–19–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Airplanes and Model A320–200 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 Airbus Model A320–111 airplanes and Model A320–200 series airplanes. This AD requires installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21. This AD results from the results of fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the center wing fuel tank.

DATES: This AD becomes effective October 26, 2005.

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

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 Airbus Model A320–111 airplanes and Model A320–200 series airplanes. That NPRM was published in the **Federal Register** on July 19, 2005 (70 FR 41350). That NPRM proposed to require installing a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter supports the NPRM.

Conclusion

We have carefully reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 371 airplanes of U.S. registry. The actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. The manufacturer will supply required parts at no charge. Based on these figures, the estimated cost of the AD for U.S. operators is $24,115, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

2005–19–16 Airbus: Amendment 39–14281. Docket No. FAA–2005–21861; Directorate Identifier 2005–NM–093–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes, certificated in any category; except those airplanes on which Airbus Modification 25513 has been accomplished in production.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent an ignition source for fuel vapor in the wing, which could result in fire or explosion in the adjacent wing fuel tank.

Compliance

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

Installation of Bonding Strips

(f) Within 56 months after the effective date of this AD, install a bonding strip between each of the two water scavenge jet pumps of the center fuel tank and the rear spar in section 21, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1067, Revision 02, dated January 27, 1997.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) French airworthiness directive F–2005–056, dated April 13, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320–28–1067, Revision 02, dated January 27, 1997, 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/code_of_federal_regulations/ibr_locations.html*.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18520 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22453; Directorate Identifier 2002–NM–139–AD; Amendment 39–14278; AD 2005–19–13]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model HS 748 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 British Aerospace Model HS 748 airplanes. This AD requires modifying the undercarriage of the nose landing gear (NLG). This AD results from a report that pintle pins could be installed in an incorrect manner during maintenance without maintenance personnel being aware (or having feedback) that the pin was installed incorrectly. We are issuing this AD to prevent jamming or collapse of the NLG, which could result in damage to the airplane structure or injury to passengers or crew.

DATES: Effective October 6, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of October 6, 2005.

We must receive comments on this AD by November 21, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us that an unsafe condition may exist on all British Aerospace Model HS 748 Airplanes. The CAA advises that failure to follow the airplane's maintenance manual instructions for installing the nose landing gear (NLG) could result in incorrect assembly of the NLG. Incorrect assembly may result in the pintle pin being unlocked, so that it is free to migrate from its support housing. It is possible to install the pintle pin in an incorrect configuration without any knowledge or suspicion that the pin was installed incorrectly. Incorrect assembly of the pin, if not corrected, could result in jamming or collapse of the NLG, which could result in damage to the airplane structure or injury to passengers or crew.

Relevant Service Information

British Aerospace has issued BAE Systems (Operations) Limited Service Bulletin HS748–32–104, dated April 9, 2002. The service bulletin describes

procedures for modifying the NLG undercarriage. Modifying the NLG undercarriage involves installing an additional baulking device by installing a location pin, lanyard, and a NLG that has had the actions of Dowty Service Bulletin 32–108E done on it. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The CAA issued British airworthiness directive 003–04–2002, to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Determination and Requirements of This AD

This airplane model is manufactured in the United Kingdom 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 CAA has kept the FAA informed of the situation described above. We have examined the CAA'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 jamming or collapse of the NLG, which could result in damage to the airplane structure or injury to passengers or crew. This AD requires accomplishing the actions specified in the service information described previously.

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 actions would take about 20 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD would be $1,300 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–2005–22453; Directorate Identifier 2002–NM–139–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):

2005–19–13 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–14278. Docket No. FAA–2005–22453; Directorate Identifier 2002–NM–139–AD.

Effective Date

(a) This AD becomes effective October 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model HS 748 series 2A and series 2B airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report that pintle pins could be installed in an incorrect manner during maintenance without maintenance personnel being aware (or having feedback) that the pin was installed incorrectly. The FAA is issuing this AD to prevent jamming or collapse of the nose landing gear (NLG), which could result in damage to the airplane structure or injury to passengers or crew.

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.

Modifying the Undercarriage of the Nose Landing Gear

(f) Within 64 months after the effective date of this AD, modify the undercarriage of the NLG in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin HS748–32–104, dated April 9, 2002.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(h) British airworthiness directive 003–04–2002 also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Service Bulletin HS748–32–104, dated April 9, 2002, 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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, 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 September 9, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18521 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22452; Directorate Identifier 2001–NM–336–AD; Amendment 39–14277; AD 2005–19–12]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–301, –321, –322, –341, and –342 Airplanes; and 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 A330–301, –321, –322, –341, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. This AD requires repetitive inspections for cracks of the inboard lower flange and radius of the left- and right-hand outboard floor beams at frame (FR) 48, and related investigative and corrective actions if necessary. This AD also provides an optional terminating action for the repetitive inspections. This AD results from reports that cracks were found during fatigue tests at the attachment between the canted lower flange of the floor beam and the pressure diaphragm in front of FR48 on both left- and right-hand floor beams; and that an additional crack was found in the flange radius of the floor beam. We are issuing this AD to detect and correct such cracking, which could propagate and result in reduced structural integrity of the fuselage.

DATES: Effective October 6, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 6, 2005.

We must receive comments on this AD by November 21, 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.

You may examine the contents of 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., Room PL–401, Washington, DC. This docket number is FAA–2005–22452; the directorate identifier for this docket is 2001–NM–336–AD.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, ANM–116, International Branch, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this is a final rule that was not preceded by notice and an opportunity for public comment, we invite you to submit any relevant written data, views, or arguments regarding this AD. Include ''Docket No. FAA–2005–22452; Directorate Identifier 2001–NM–336–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The 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 A330–301, –321, –322, –341, and –342 airplanes; and Model A340–200 and A340–300 series airplanes. The DGAC advises that cracks were found during fatigue tests at the attachment between the canted lower flange of the floor beam and the pressure diaphragm in front of frame (FR) 48 on both left- and right-hand floor beams. The cracks extended between two fasteners close to FR48 on the canted lower flange of the floor beam. In addition, another crack was found in the flange radius of the floor beam. Further investigation revealed that the cracks resulted from excessive bending of the canted lower flange of the floor beam. Fatigue cracks could propagate from one fastener to another. This condition, if not corrected, could result in reduced structural integrity of the fuselage.

Relevant Service Information

Airbus has issued Service Bulletin A330–53–3014, Revision 05, dated June 20, 2003 (for Model A330–301, –321, –322, –341, and –342 airplanes); and Service Bulletin A340–53–4022, Revision 05, dated June 16, 2003 (for Model A340–200 and A340–300 series airplanes). The service bulletins describe procedures for doing repetitive high-frequency eddy current (HFEC) inspections for cracks of the inboard lower flange and radius of the left- and right-hand outboard floor beams at FR48. The service bulletins also describe procedures for reporting inspection findings to Airbus. If no cracks are found during an HFEC inspection, the service bulletins specify that operators repeat the inspection. If any crack is found during any HFEC inspection, the service bulletins give procedures for related investigative and corrective actions as follows:

- For cracks at the radius, the service bulletins specify that operators should contact Airbus for repair instructions before further flight.
- For cracks at the flange, the service bulletins specify that operators should measure the total length of the crack. If the crack is within certain limits, the service bulletins give procedures for stop-drilling the crack before further flight, and for repairing the crack within 500 flight cycles after the stop-drilling by installing stainless steel doublers under the floor beams. If the crack is outside certain limits, the service bulletins specify that operators should contact Airbus for repair instructions before further flight.

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 directives 2001–506(B), dated October 17, 2001, and 2001–507(B), dated October 17, 2001, to ensure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletins A330–53–3013, Revision 03 dated December 23, 1999 (for Model A330–301, –321, –322, –341, and –342 airplanes); and Service Bulletin A340–53–4021, Revision 05, dated January 27, 2003 (for Model A340–200 and A340–300 series airplanes). These service bulletins provide an optional terminating action for the repetitive inspections of the inboard lower flange. The terminating action is installing new stainless steel doublers under the floor beam to limit the bending movement of the canted lower flange. The installation involves removing certain fasteners and doing a rotating probe inspection for cracks of the fastener holes. If any crack is found, the service bulletins specify contacting Airbus for repair instructions.

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 detect and correct cracks between the canted lower flange of the floor beam and the pressure diaphragm in front of FR48 on both left- and right-hand floor beams; and cracks in the flange radius of the floor beam; which could propagate and result in reduced structural integrity of the fuselage. This AD requires accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the AD, the French Airworthiness Directives, and the Service Bulletins.''

Operators should note that, in consonance with the findings of the DGAC, this proposed AD allows operators to continue the repetitive inspections instead of doing the terminating action. Additionally, in certain cases, operators that detect cracking may defer the repair for a specified period of time. In making these determinations, we consider that, in the case of this AD, long-term continued operational safety is adequately assured by doing the repetitive inspections to detect cracking before it represents a hazard to the airplane, and by doing repairs within the specified time limits.

Differences Among the AD, the French Airworthiness Directives, and the Service Bulletins

The applicability of the French airworthiness directives excludes airplanes on which Airbus Service Bulletin A330–53–3013 or A340–53–4021 was accomplished in service. However, we have not excluded those airplanes in the applicability of this AD; rather, this AD includes a requirement to accomplish the actions specified in those service bulletins. This requirement will ensure that the actions specified in the applicable service bulletin and required by this AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance is approved. This difference has been coordinated with the DGAC.

The French airworthiness directives specify a compliance time based on the time ''since new.'' However, this AD specifies a compliance time after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness. This decision is based on our determination that ''since new'' may be interpreted differently by different operators. We

find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty.

The service bulletins specify that you may contact the manufacturer for instructions on how to repair certain conditions, but this AD would require you to repair those conditions using a method that we or the DGAC (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we, or the DGAC, approve would be acceptable for compliance with this AD.

Although the Accomplishment Instructions of Airbus Service Bulletins A330–53–3014, Revision 05, and A340–53–4022, Revision 05, provide procedures for reporting certain information to the manufacturer, this AD would not require those actions.

Clarification of Optional Terminating Action

The service bulletins describe procedures for installing a stainless steel doubler, which is an optional terminating action for the repetitive inspections of both the inboard lower flange and the radius. The manufacturer has determined that the crack in the radius is a direct consequence of the load re-distribution following cracking of the fastener holes. The stainless steel doubler reinforces the area of the fastener holes.

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.

The following table provides the estimated costs to comply with this AD for any affected airplane that might be imported and placed on the U.S. Register in the future.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts cost	Cost per airplane
HFEC inspection, per inspection cycle	2	$65	None	$130, per inspection cycle.
Optional terminating action	18	65	$1,930	$3,100.

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**.

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):

2005–19–12 Airbus: Amendment 39–14277. Docket No. FAA–2005–22452; Directorate Identifier 2001–NM–336–AD.

Effective Date

(a) This AD becomes effective October 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–301, –321, –322, –341, and –342 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; on which Airbus Modification 42418 has not been accomplished in production.

Unsafe Condition

(d) This AD results from reports that cracks were found during fatigue tests at the attachment between the canted lower flange of the floor beam and the pressure diaphragm in front of frame (FR) 48 on both left- and right-hand floor beams; and that an additional crack was found in the flange radius of the floor beam. The FAA is issuing this AD to detect and correct such cracking,

which could propagate and result in reduced structural integrity of the fuselage.

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.

Repetitive Inspections

(f) At the applicable times in paragraph (f)(1) or (f)(2) of this AD: Do high-frequency eddy current inspection for cracks of the inboard lower flange and radius of the left-hand and right-hand outboard floor beams at FR48. Do all inspections in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD. Doing the action in paragraph (h) of this AD terminates the repetitive inspection requirements of this paragraph.

(1) For Airbus Model A330–301, –321, –322, –341, and –342 airplanes: Do the first inspection before the accumulation of 8,400 flight cycles since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later; and repeat the inspection thereafter at intervals not to exceed 3,860 total flight cycles or 15,050 flight hours, whichever occurs earlier.

(2) For Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes: Do the first inspection before the accumulation of the earlier of 9,200 flight cycles or 70,000 flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness, or within 6 months after the effective date of this AD, whichever occurs later; and repeat the inspection thereafter at intervals not to exceed 3,070 flight cycles.

TABLE 1.—SERVICE BULLETINS

For airbus model—	Airbus service bulletin—
A330–301, –321, –322, –341, and –342 airplanes	A330–53–3014, Revision 05, dated June 20, 2003.
A340–211, –212, –213, –311, –312, and –313 airplanes	A340–53–4022, Revision 05, dated June 16, 2003.

Related Investigative and Corrective Actions

(g) If any crack is found during any inspection required by paragraph (f) of this AD: Do the applicable actions in paragraph (g)(1) and (g)(2) of this AD.

(1) For cracks at the radius: Before further flight, repair the crack according to a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Geáneárale de l'Aviation Civile (DGAC) (or its delegated agent).

(2) For cracks at the flange: Before further flight, measure the total length of the crack and do the applicable action in paragraph (g)(2)(i) and (g)(2)(ii) of this AD.

(i) If the crack is less than 12 mm (0.472 inch) in length: Before further flight, stop-drill the crack and, within 500 flight cycles after stop-drilling the crack, do the action in paragraph (h) of this AD.

(ii) If the crack is greater than or equal to 12 mm (0.472 inch) in length: Before further flight, repair the crack according to a method approved by either the Manager, International Branch, ANM–116; or the Direction Geáneárale de l'Aviation Civile (DGAC) (or its delegated agent).

Optional Terminating Action

(h) Installing a stainless steel doubler in accordance with Airbus Service Bulletin A330–53–3013, Revision 03, December 23, 1999; or Airbus Service Bulletin A340–53–4021, Revision 05, dated January 27, 2003; as applicable; terminates the repetitive inspection requirements of paragraph (f) of this AD. If any crack is found during this installation while doing the rotating probe inspection of the fastener holes: Before further flight, repair the crack according to a method approved by either the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent).

No Reporting Required

(i) Although the Accomplishment Instructions of the service bulletins identified in Table 1 of this AD describe procedures for reporting certain information to the manufacturer, this AD would not require those actions.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(k) French airworthiness directives 2001–506(B) and 2001–507(B), both dated October 17, 2001, also address the subject of this AD.

Material Incorporated by Reference

(l) You must use the service information identified in Table 2 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 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*.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
A330–53–3013	03	December 23, 1999.
A330–53–3014	05	June 20, 2003.
A340–53–4021	05	January 27, 2003.
A340–53–4022	05	June 16, 2003.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18522 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20347; Directorate Identifier 2004–NM–226–AD; Amendment 39–14284; AD 2005–19–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 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 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. This AD requires installing an updated version of the operational program software (OPS) and certain other software in the flight management computers (FMCs); and doing configuration checks to ensure that certain software is properly installed and doing other specified actions. This AD also requires reinstalling software, if necessary. This AD results from one operator reporting FMC map shifts on several Model 737–400 series airplanes with dual FMCs, using OPS version U10.4A. We are issuing this AD to prevent the FMC from displaying the

incorrect actual navigation performance value to the flightcrew, which could prevent adequate alerting of a potential navigation error. This condition could result in a near miss with other airplanes or terrain, or collision if other warning systems also fail.

DATES: Effective October 26, 2005.

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

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC.

Contact Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Sam 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 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. That NPRM was published in the **Federal Register** on February 15, 2005 (70 FR 7687). That NPRM proposed to require installing an updated version of the operational program software (OPS) in the flight management computers (FMCs), and doing other specified actions. That action also proposed to require reinstalling software, if necessary.

Comments

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

Support for the Proposed AD

Two commenters support the proposed AD.

Request To Revise Applicability

Two commenters request that we revise the applicability of the NPRM so that it applies to Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes equipped with two certain FMCs having part numbers (P/Ns) 171497–05–01 or 176200–01–01, installed with OPS versions U10.3, U10.4, U10.4A, or U10.5. One commenter, the airplane manufacturer, states that, although the airplanes identified in the effectivity of Boeing Alert Service Bulletins 737–34A1801 and 737–34A1821, both dated July 15, 2004, have at least one of the affected FMCs installed, not all of those airplanes have two of the affected FMCs installed. The commenter states that these airplanes also may not have the affected version of FMC OPS software installed.

In addition, the same commenter states that, for Model 737–600, –700, –700C, –800 and –900 series airplanes, it began delivering airplanes with OPS version U10.5A on airplanes with line numbers 1529 and higher. The airplane manufacturer, therefore, also requests that we include affected line numbers 1 through 1528 in the applicability of the NPRM.

According to the second commenter, the changes in Boeing Alert Service Bulletin 737–34A1821 are only applicable to airplanes equipped with FMCs, which are 4 modular concept units (MCU) wide, installed with OPS version 10.0 and newer. The commenter states that many of the airplanes identified in the effectivity of Boeing Alert Service Bulletin 737–34A1821 have FMCs that are 8 MCU wide and are installed with earlier versions of OPS, such as U5 and U7.5. The commenter also states that, for airplanes with 8–MCU FMCs, operators would have to upgrade the hardware from 8 MCU to 4 MCU and install new operational program configuration (OPC) software, before they could comply with the installation of OPS version U10.5A.

We partially agree. By referencing the airplanes identified in Boeing Alert Service Bulletins 737–34A1801 and 737–34A1821 in the applicability of the NPRM, we inadvertently applied the proposed AD to more airplanes than necessary. Furthermore, it was not our intention to require concurrent hardware and software changes as the second commenter points out. We have revised paragraph (c) of this AD to clarify that it applies to Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes, certificated in any category; equipped with two certain FMCs having P/N 171497–05–01 or 176200–01–01; installed with OPS version U10.3, U10.4, U10.4A, or U10.5.

We cannot, however, include the line numbers of certain affected airplanes in the applicability of this AD. Although the commenter has provided the correct line numbers for the affected airplanes in this AD, we have determined, in coordination with the manufacturer, that we should not use line numbers in the applicability of an AD. In the past, using line numbers has caused errors in the effectivity of the service bulletin, and consequently in the applicability of the AD. Therefore, we have not added line numbers of certain airplanes to the applicability of this AD.

Request To Exclude Certain Actions

One commenter requests that we exclude the proposed requirement to maintain an onboard software media binder with the latest version of OPS. The commenter states this proposed requirement, which is referenced in paragraph (f) of the NPRM as one of the ''* * * other specified actions * * *,'' could be interpreted as creating a regulatory requirement to keep a media binder onboard an affected airplane. The commenter also states that several operators have removed onboard media binders because they create an administrative burden.

We agree that the requirement to replace the existing OPS disk set in the airplane's software media binder with the new OPS disk set is not necessary for ensuring that the unsafe condition of this AD is adequately addressed. Therefore, we have deleted the requirement to do the other specified actions from paragraph (f) of this AD. Instead, we have added new paragraphs (f)(1) and (f)(2) to this AD, which specify installing certain software and doing certain configuration checks for adequately addressing the unsafe condition. We have also specified these actions in the Summary paragraph of this AD.

Request To Use an Alternative Method of Compliance (AMOC)

One commenter, the airplane manufacturer, requests that we allow the option of installing OPS version U10.6, in accordance with Boeing Service Bulletin 737–34–1768 (for Model 737–600, –700, –700C, –800, and –900 series airplanes) or Boeing Service Bulletin 737–34–1879 (for Model 737–300, –400, and –500 series airplanes), as applicable. The commenter states that version U10.6 is based on version

U10.5a and also prevents the FMC from displaying the incorrect actual navigation performance value to the flightcrew. The commenter further states that version U10.6 is the latest certified version of FMC OPS software, and that it is currently installed in production on Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes.

We agree to allow operators the option of installing OPS version U10.6 to address the unsafe condition of this AD. Since issuance of the NPRM, we have reviewed Boeing Service Bulletin 737–34–1768 and Boeing Service Bulletin 737–34–1879, both dated August 11, 2005. These service bulletins describe procedures for installing OPS version U10.6 having P/N 549849–016 and certain other software in the left and right FMCs, and doing configuration checks to ensure that certain software is properly installed. For Model 737–300, –400, and –500 series airplanes, the certain other software includes the software options operational program configuration (OPC) software that was originally installed before installation of OPS version U10.6 and the navigational database (NDB) software. For Model 737–600, –700, –700C, –800, and –900 series airplanes, the certain other software includes the applicable OPC software, the new compatible model/engine database (MEDB) software, and the NDB software.

For certain Model 737–600, –700, –700C, –800, and –900 series airplanes, Boeing Service Bulletin 737–34–1768 also describes procedures for installing common display system (CDS) OPC software in the left and right display electronic units. Operators should note that this is additional work, which is not required if an operator installs OPS version U10.5a in accordance with Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004. We have determined that accomplishing the actions specified in the applicable service information adequately addresses the unsafe condition of this AD. Therefore, we have added a new paragraph (h) to this AD and re-lettered the subsequent paragraphs accordingly.

Conclusion

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

Costs of Compliance

There are about 3,482 airplanes of the affected design in the worldwide fleet. This AD affects about 1,312 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Boeing model	Work hours	Average labor rate per hour	Parts	Cost per airplane
737–300, –400, and –500 series airplanes	1	$65	$15	$80
737–600, –700, –700C, –800, and –900 series airplanes	2	65	15	145

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–19 Boeing: Amendment 39–14284. Docket No. FAA–2005–20347; Directorate Identifier 2004–NM–226–AD.

Effective Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes, certificated in any category; equipped with two Smiths Industries Aerospace Flight Management Computers (FMCs) having part number 171497–05–01 or 176200–01–01; installed with operational program software (OPS) version U10.3, U10.4, U10.4A, or U10.5.

Unsafe Condition

(d) This AD was prompted by one operator reporting FMC map shifts on several Model 737–400 series airplanes with dual FMCs, using OPS version U10.4A. We are issuing this AD to prevent the FMC from displaying the incorrect actual navigation performance value to the flightcrew, which could prevent adequate alerting of a potential navigation error. This condition could result in a near miss with other airplanes or terrain, or collision if other warning systems also fail.

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.

Install Updated Version of OPS

(f) Within 180 days after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004 (for Model 737–600, –700, –700C, –800 and –900 series airplanes); or Boeing Alert Service Bulletin 737–34A1821, dated July 15, 2004 (for Model 737–300, –400, and –500 series airplanes); as applicable. Where the service bulletin specifies a configuration check, certificated maintenance personnel must perform the configuration check.

(1) Install the updated version of the OPS, the compatible model/engine database (MEDB) software if applicable, the current version of the navigational database (NDB) software, and the software options database (OPC) in the left and right FMCs.

(2) Do configuration checks of the left and right FMCs to ensure that the updated version of the OPS, compatible version of the MEDB software if applicable, and OPC software is correctly installed.

Reinstall Software, if Necessary

(g) If the incorrect software version of the OPS, MEDB software if applicable, or OPC software is found installed on any FMC during any configuration check required by paragraph (f) of this AD: Before further flight, reinstall the software, as applicable. Do the reinstallation of any software in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004; or Boeing Alert Service Bulletin 737–34A1821, dated July 15, 2004; as applicable.

Optional Installation of OPS Version U10.6

(h) Doing the applicable actions specified in paragraphs (h)(1) and (h)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–34–1768, dated August 11, 2005 (for Model 737–600, –700, –700C, –800, and –900 series airplanes); or Boeing Service Bulletin 737–34–1879, dated August 11, 2005 (for Model 737–300, –400, and –500 series airplanes), as applicable, is acceptable for compliance with the corresponding requirements of paragraphs (f) and (g) of this AD.

(1) Install version U10.6 of the OPS software, the applicable OPC software, the new compatible MEDB software if applicable, and the NDB software in the left and right FMCs; install the common display system (CDS) OPC software in the left and right display electronic units if applicable; and do configuration checks to ensure that certain software is properly installed. Where the service bulletin specifies a configuration check, certificated maintenance personnel must perform the configuration check.

(2) If the incorrect software version of the OPS, OPC software, CDS OPC software if applicable, or MEDB software if applicable, is found installed during any configuration check required by paragraph (h)(1) of this AD: Before further flight, reinstall the software, as applicable. Do the reinstallation of any software in accordance with the applicable service bulletin.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin 737–34A1801, dated July 15, 2004; or Boeing Alert Service Bulletin 737–34A1821, dated July 15, 2004, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The optional actions, if accomplished, must be performed in accordance with Boeing Service Bulletin 737–34–1768, dated August 11, 2005; or Boeing Service Bulletin 737–34–1879, dated August 11, 2005, as applicable. 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 12, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18523 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21344; Directorate Identifier 2004–NM–190–AD; Amendment 39–14283; AD 2005–19–18]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Short Brothers Model SD3–30 and SD3–60 airplanes equipped with certain fire extinguishers. That AD currently requires replacement of the covers for fire extinguisher adapter assemblies that are installed on certain bulkheads with new covers that swivel to lock the extinguishers in place; and replacement of nozzles and triggers on these fire extinguishers with better fitting nozzles and stronger triggers. The existing AD also currently requires the installation of new fire extinguisher point placards and a revision of the airplane flight manual (AFM) to instruct the flightcrew in the use of the new covers for these adapter assemblies. This new AD also requires modification of the fire extinguishing point adapter assembly of the forward and aft baggage bays as applicable. This new AD also adds airplanes to the applicability. For these new airplanes, this new AD requires a revision to the AFM for instructions on using the new fire extinguisher adapter. This AD results from reports of individuals experiencing fire extinguishant blowback when the extinguishant discharges through the fire extinguishing point adapters. We are issuing this AD to prevent fire extinguishant blowback, which could result in injury to a person using the fire extinguisher in the event of a fire.

DATES: Effective October 26, 2005.

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

The Director of the Federal Register previously approved the incorporation by reference of certain other publications, as listed in the regulations, as of June 8, 1998 (63 FR 24387, May 4, 1998).

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 Short Brothers, Airworthiness & Engineering Quality, PO Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 supersedes AD 98–09–28, amendment 39–10509 (63 FR 24387, May 4, 1998). The existing AD applies to all Short Brothers Model SD3–30 and SD3–60 airplanes equipped with certain fire extinguishers. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32537). That NPRM proposed to continue to require the actions of AD 98–09–28. That NPRM also proposed to require modification of the fire extinguishing point adapter assembly of the forward and aft baggage bays as applicable. That NPRM also proposed to add airplanes to the applicability. For those new airplanes, that NPRM proposed to require a revision to the airplane flight manual (AFM) for instructions on using the new fire extinguisher adapter.

Comments

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

Explanation of Change to Applicability

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

Conclusion

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

Costs of Compliance

This AD affects about 75 airplanes of U.S. registry.

The actions that are required by AD 98–09–28 and retained in this AD take about between 9 and 14 work hours per airplane, depending on airplane configuration, at an average labor rate of $65 per work hour. Required parts cost between $735 and $776 per airplane, depending on airplane configuration. Based on these figures, the estimated cost of the currently required actions is between $1,320 and $1,686 per airplane.

The new actions 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 new actions specified in this AD for U.S. operators is $4,875, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD 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 removing amendment 39–10509 (63 FR 24387, May 4, 1998) and by adding the following new airworthiness directive (AD):

2005–19–18 Short Brothers PLC: Amendment 39–14283. Docket No. FAA–2005–21344; Directorate Identifier 2004–NM–190–AD.

Effective Date

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

Affected ADs

(b) This AD supersedes AD 98–09–28.

Applicability

(c) This AD applies to all Shorts Model SD3–60 SHERPA, SD3–SHERPA, SD3–30, and SD3–60 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of individuals experiencing fire extinguishant blowback when the extinguishant discharges through the fire extinguishing point adapters. We are issuing this AD to prevent fire extinguishant blowback, which could result in injury to a person using the fire extinguisher in the event of a fire.

Compliance

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

Requirements of AD 98–09–28

Install New Covers

(f) For Model SD3–30 and SD3–60 airplanes equipped with Fire Fighting Enterprises (U.K.) Ltd. fire extinguishers: Within 6 months after June 8, 1998 (the effective date of AD 98–09–28), install a new cover on each fire extinguisher adapter assembly on bulkheads between the passenger cabin and aft and/or forward baggage bay, in accordance with Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 airplanes), as applicable.

Install Placards and Revise the Airplane Flight Manual (AFM)

(g) For Model SD3–30 and SD3–60 airplanes equipped with Fire Fighting Enterprises (U.K.) Ltd. fire extinguishers: Prior to further flight after accomplishing the actions required by paragraph (f) of this AD, accomplish both paragraphs (g)(1) and (g)(2) of this AD:

(1) Install new fire extinguisher point placards, in accordance with Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 airplanes), as applicable. And

(2) Revise the Limitations section of the FAA-approved AFM, in accordance with Note 1 of Paragraph 1.C. of Shorts Service Bulletin SD330–26–14, dated September 1994 (for Shorts Model SD3–30 airplanes), or Shorts Service Bulletin SD360–26–11, dated July 1994 (for Shorts Model SD3–60 airplanes), as applicable.

Corrective Actions for Fire Extinguishers With Certain Part Numbers

(h) For Model SD3–30 and SD3–60 airplanes equipped with fire extinguishers having part number (P/N) BA51012SR–3 or BA51012SR: Within 6 months after June 8, 1998, accomplish either paragraph (h)(1) or (h)(2) of this AD:

(1) Install a chamfered nozzle on the discharge head assembly of each fire extinguisher and add a new trigger by replacing the discharge head assembly with a new discharge head assembly having P/N BA22988–3, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992. Or

(2) Replace the trigger on the discharge head assembly of each fire extinguisher with a new trigger, in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–108, dated September 1992. After replacement, install a chamfered nozzle on the discharge head assembly of each fire extinguisher by reworking the discharge head assembly in accordance with Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107, Revision 1, dated November 2, 1992.

New Requirements of This Ad

Modify the Fire Extinguishing Point Adapter Assembly

(i) For Model SD3 airplanes equipped with Fire Fighting Enterprises (U.K.) Ltd. fire extinguishers: Within 3 months after the effective date of this AD, modify the fire extinguishing point adapter assembly of the forward and aft baggage bays, as applicable, by doing all of the actions specified in the Accomplishment Instructions of Shorts Service Bulletin SD330–26–15, dated May 29, 2002 (for Model SD3–30 airplanes); Shorts Service Bulletin SD360–26–13, dated May 29, 2002 (for Model SD3–60 airplanes); Shorts Service Bulletin SD360 Sherpa-26–1, dated May 29, 2002 (for Model SD3–60 SHERPA airplanes); or Shorts Service Bulletin SD3 Sherpa-26–3, dated May 29, 2002 (for Model SD3–SHERPA airplanes); as applicable.

Revise AFM of Certain Airplanes

(j) For Model SD3–60 SHERPA and SD3-SHERPA airplanes equipped with Fire Fighting Enterprises (U.K.) Ltd. fire extinguishers: Before further flight after accomplishing the modification required by paragraph (i) of this AD, revise the Limitations section of the Short Brothers SD3–60 SHERPA AFM, Document No. SB.6.2, by inserting into the AFM Short Brothers Document No. SB.6.2, Amendment P/5, dated February 6, 2002 (for Model SD3–60 SHERPA airplanes); or of the Short Brothers SD3-SHERPA AFM, Document No. SB.5.2, by inserting into the AFM Short Brothers Document No. SB.5.2, Amendment P/7, dated February 6, 2002 (for Model SD3-SHERPA airplanes); as applicable.

Alternative Methods of Compliance (AMOCs)

(k) 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

(l) British airworthiness directives 005–05–2002, 006–05–2002, 007–05–2002, and 008–05–2002 also address the subject of this AD.

Material Incorporated by Reference

(m) You must use the service information listed in Table 1 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—ALL MATERIAL INCORPORATED BY REFERENCE

Service information	Revision level	Date
Amendment P/5 to the Short Brothers SD3–60 SHERPA Flight Manual, Document No. SB.6.2	Original	February 6, 2002.
Amendment P/7 to the Short Brothers SD3-SHERPA Flight Manual, Document No. SB.5.2	Original	February 6, 2002.
Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107	Revision 1	November 2, 1992.
Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–108	Original	September 1992.
Short Brothers Shorts Service Bulletin SD330–26–14	Original	September 1994.
Short Brothers Shorts Service Bulletin SD360–26–11	Original	July 1994.
Shorts Service Bulletin SD3 Sherpa-26–3	Original	May 29, 2002.
Shorts Service Bulletin SD330–26–15	Original	May 29, 2002.
Shorts Service Bulletin SD360 Sherpa-26–1	Original	May 29, 2002.
Shorts Service Bulletin SD360–26–13	Original	May 29, 2002.

(1) The Director of the Federal Register approved the incorporation by reference of the service information listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE

Service information	Date
Amendment P/5 to the Short Brothers SD3–60 SHERPA Flight Manual, Document No. SB.6.2	February 6, 2002.
Amendment P/7 to the Short Brothers SD3–SHERPA Flight Manual, Document No. SB.5.2	February 6, 2002.
Shorts Service Bulletin SD3 Sherpa-26–3	May 29, 2002.
Shorts Service Bulletin SD330–26–15	May 29, 2002.
Shorts Service Bulletin SD360 Sherpa-26–1	May 29, 2002.

TABLE 2.—NEW MATERIAL INCORPORATED BY REFERENCE—Continued

Service information	Date
Shorts Service Bulletin SD360–26–13	May 29, 2002.

Short Brothers SD3–60 SHERPA Flight Manual, Document No. SB.6.2 contains the following current pages:

Page No.	Revision level shown on page	Date shown on page
List of current pages 7	G/1	April 24, 1996.
7A, 7B	Basic	April 18, 1996.
Particular Amendment Record Sheet 9	Basic	April 18, 1996.

(For Document No. SB.6.2, the Basic Issue date is only located on page 1, Section 1; the general amendment date is only located on the ''General * Amendment Record Sheet;'' and the particular amendment dates are only located on the ''Particular * Amendment Record Sheet.'')

Short Brothers SD3–SHERPA Flight Manual, Document No. SB.5.2, contains the following current pages:

Page No.	Revision level shown on page	Date shown on page
List of current pages 7	G/3	December 1, 1993.
7A	G/2	September 25, 1992.
7B	Basic	August 30, 1990.
Particular Amendment Record Sheet 9	Basic	August 30, 1990.

(For Document No. SB.5.2., the Basic Issue date is only located in the CAA approval letter dated August 31, 1990; the general amendment dates are located only on the ''General * Amendment Record Sheet;'' the particular amendment dates are only located on the ''Particular * Amendment Record Sheet.'')

(2) The Director of the Federal Register previously approved the incorporation by reference of the service information listed in Table 3 of this AD as of June 8, 1998 (63 FR 24387, May 4, 1998).

TABLE 3.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Service Bulletin	Revision level	Date
Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–107	Revision 1	November 2, 1992.
Fire Fighting Enterprises (U.K.) Ltd. Service Bulletin 26–108	Original	September 1992.
Short Brothers Shorts Service Bulletin SD330–26–14	Original	September 1994.
Short Brothers Shorts Service Bulletin SD360–26–11	Original	July 1994.

(3) Contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland, 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 September 12, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18524 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21174; Directorate Identifier 2005–CE–23–AD; Amendment 39–14285; AD 2005–19–20]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc., Models PA–28–160, PA–28–161, PA–28–180, and PA–28–181 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain The New Piper Aircraft, Inc. (Piper) Models PA–28–160, PA–28–161, PA–28–180, and PA–28–181 airplanes that incorporate Petersen Aviation, Inc. Supplemental Type Certificate (STC) SA2660CE installed between April 20, 1998, and April 1, 2005, and incorporate Petersen Aviation, Inc. Service Bulletin SB98–1. This AD requires you to replace the AN894–6–4 bushing screw thread expanders on the gascolator and bushing attached to the inlet of the top fuel pump with NAS1564–6–4J reducers and AN818–6 nuts. This AD results from reports of fuel leaks during the post STC installation tests. We are issuing this AD to prevent fuel fittings used in STC SA2660CE from leaking fuel in the engine compartment, which could result in an engine fire. This condition could lead to loss of control of the airplane.

DATES: This AD becomes effective on November 4, 2005.

As of November 4, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Petersen Aviation, Inc., 984 K Road, Minden, Nebraska 68959; telephone: (308) 832–2050; facsimile: (308) 832–2311.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21174; Directorate Identifier 2005–CE–23–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? We have received reports of fuel leaks found during post fuel pump checks on Piper Models PA–28–160, PA–28–161, PA–28–180, and PA–28–181 airplanes after STC SA2660CE was incorporated.

STC SA2660CE enables the referenced airplanes to run on leaded and unleaded automotive gasoline, 91 minimum antiknock index (RON+MON).

The STC replaces the Piper electric boost pump with two different electric boost pumps. Subsequently, Petersen Aviation, Inc. Service Bulletin 98–1 provides for installation of a fuel flow bypass that incorporates an o-ring seal fuel fitting (AN894–6–4 bushing screw thread expander) on the flared tube fitting (AN826–6 tee). The internal shape of the AN894–6–4 bushing screw thread expander is intended to use an o-ring seal, but there is no corresponding o-ring seal location on the AN826–6 tee.

The AN894–6–4 bushing screw thread expander has clearance machining cut for the mating screw threads but does not provide a seal against the cone surface of the AN826–6 tee.

What is the potential impact if FAA took no action? If not prevented, fuel fittings used in STC SA2660CE could leak fuel in the engine compartment. Failure of these fittings could result in an engine fire. This condition could lead to loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper Models PA–28–160, PA–28–161, PA–28–180, and PA–28–181 airplanes that incorporate Petersen Aviation, Inc. STC SA2660CE installed between April 20, 1998, and April 1, 2005, and incorporate Petersen Aviation, Inc. Service Bulletin SB98–1. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 2, 2005 (70 FR 32273). The NPRM proposed to require you to replace the two AN894–6–4 bushing screw thread expanders on the two AN826–6 tees with AN818–6 nuts and NAS1564–6–4J reducers.

Comments

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

Comment Issue No. 1: These Airplanes Should Not be Flying

What is the commenter's concern? The commenter states that it is their opinion that this kind of problem aircraft should not be flying.

What is FAA's response to the concern? We do not agree with the commenter. We identified an unsafe condition and the purpose of an AD is to address that unsafe condition and maintain the continued safe operation of an existing airplane model. The solution to the defined unsafe condition is to replace certain parts with improved design parts. We determined that the unsafe condition is addressed through the actions of this AD.

We are not changing the final rule AD based on this comment.

Comment Issue No. 2: AD Is Not Necessary

What is the commenter's concern? Peterson Aviation states that parts have been distributed to owners of the affected airplanes with reimbursement for installation; therefore, offering an incentive for the owners/operators of the affected airplanes to install the new parts.

The commenter also states that the only leaks that have been found were during recent post installation checks. Airplanes that had the modification done previously and have been using it for several years do not appear to have the fuel leaks.

The commenter requests us to issue a Special Alert Information Bulletin (SAIB) to address this condition rather than issue an AD.

What is FAA's response to the concern? We do not agree with the commenter. As mentioned above, we have identified an unsafe condition and an AD is the regulatory action that we use to ensure that the unsafe condition is addressed on all affected airplanes.

SAIBs are for information only and are not mandatory. Therefore, an SAIB would not ensure that the unsafe condition is addressed on all affected airplanes.

We are not changing the final rule AD based on this comment.

Conclusion

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

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 50 airplanes in the U.S. registry.

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

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 per hour = $65	Petersen Aviation will provide parts at no cost.	Petersen Aviation will cover the cost for labor.	Petersen Aviation will cover the cost for parts and labor.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21174; Directorate Identifier 2005–CE–23–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–20 The New Piper Aircraft, Inc.: Amendment 39–14285; Docket No. FAA–2005–21174; Directorate Identifier 2005–CE–23–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 4, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models PA–28–160, PA–28–161, PA–28–180, and PA–28–181 airplanes, serial numbers 28–671 through 28–5859, 28–7105001 through 28–7505261,28–7690001 through 28–8590001, and all serial numbers thereafter, that:

(1) Are certificated in any category;

(2) Incorporate Peterson Aviation, Inc. Supplemental Type Certificate (STC) SA2660CE installed between April 20, 1998 and April 1, 2005; and

(3) Incorporate Peterson Aviation, Inc. Service Bulletin SB98–1.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of fuel leaks during the post STC installation tests. The actions specified in this AD are intended to prevent fuel fittings used in STC SA2660CE from leaking fuel in the engine compartment, which could result in an engine fire. This condition could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Replace the two AN894–6–4 bushing screw thread expanders on the two AN826–6 tees (one on the gascolator and the other one attached to a bushing (AN912–2J) attached to the inlet on the top of the top fuel pump) with NAS1564–6–4J reducers and AN818–6 nuts.	At the next 100-hour or annual inspection that occurs following 30 days after November 4, 2005 (the effective date of this AD), whichever occurs first.	Follow Petersen Aviation, Inc. Service Bulletion PA–28–160, –161, –180, –181 Bulletion No. SB 05–2, dated April 12, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact James P. Galstad, Aerospace Engineer, FAA Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone:(316) 946–4135; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Petersen Aviation, Inc. Service Bulletin PA–28–160, –161, –180, –181 Bulletin No. SB 05–2, dated April 12, 2005. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Petersen Aviation, Inc., 984 K Road, Minden, Nebraska 68959; telephone: (308) 832–2050; facsimile: (308) 832–2311. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability

of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–21174; Directorate Identifier 2005–CE–23–AD.

Issued in Kansas City, Missouri, on September 13, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18525 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20802; Directorate Identifier 2005–CE–18–AD; Amendment 39–14282; AD 2005–19–17]

RIN 2120–AA64

Airworthiness Directives; PZL-Swidnik S.A. Models PW–5 ''Smyk'' and PW–6U Gliders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain PZL-Swidnik S.A. (PZL-Swidnik) Models PW–5 ''Smyk'' and PW–6U gliders. This AD requires you to inspect for the minimum dimension of the left side aileron, right side aileron, and airbrake push-rod ends for certain Model PW–5 ''Smyk'' gliders; inspect for the minimum dimension of the aileron, airbrake, and elevator control push-rod ends for certain Model PW–6U gliders; and replace any push-rod end that does not meet the minimum dimension. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and replace any push-rod end that does not meet the minimum dimension, which could result in failure of the control system. This failure could lead to loss of control of the glider.

DATES: This AD becomes effective on October 31, 2005.

As of October 31, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact PZL-Swidnik S.A., Polish Aviation Works, Al. Lotnikow Polskich 1, 21–045 Swidnik, Poland; telephone: 48 81 468 09 01 751 20 71; facsimile: 48 81 468 09 19 751 21 73.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The General Inspectorate of Civil Aviation (GICA), which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on certain PZL-Swidnik S.A. (PZL-Swidnik) gliders. The GICA reports that an owner of a Model PW–6U glider found the dimension of the push-rod end to not meet the minimum dimension of 0.165 inches (in.) or 4.2 millimeter (mm). Further, the GICA reports that the manufacturer has identified a production run of these parts that do not meet the minimum dimension of the push-rod end. Similar push-rod ends, where applicable, are used to link the ailerons, airbrakes, and elevator control systems in the Models PW–5 ''Smyk'' and PW–6U gliders.

What is the potential impact if FAA took no action? Any push-rod end that does not meet the minimum dimension could result in failure of the control system. This failure could lead to loss of control of the glider.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain PZL-Swidnik S.A. (PZL-Swidnik) Models PW–5 ''Smyk'' and PW–6U gliders. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 27, 2005 (70 FR 21691). The NPRM proposed to require you to inspect for the minimum dimension of the left side aileron, right side aileron, and airbrake push-rod ends for certain Model PW–5 ''Smyk'' gliders; inspect for the minimum dimension of the aileron, airbrake, and elevator control push-rod ends for certain Model PW–6U gliders; and replace any push-rod end that does not meet the minimum dimension.

Comments

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

Conclusion

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

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many gliders does this AD impact? We estimate that this AD affects 67 gliders in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected gliders? We estimate the following costs to do the inspection of the push-rod ends:

Labor cost	Parts cost	Total cost per glider	Total cost on U.S. operators
1 work hour × $65 = $65	Not applicable	$65	67 × $65 = $4,355.

We estimate the following costs to do any necessary push-rod end replacements that would be required based on the results of this inspection. We have no way of determining the number of gliders that may need this replacement:

Labor cost per push-rod end	Parts cost	Total cost per push-rod end per glider
1 work hour × $65 = $65	Not applicable	$65

The manufacturer has stated that the costs for any required parts and transportation of the parts will be covered under the manufacturer's warranty.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20802; Directorate Identifier 2005–CE–18–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–19–17 PZL-Swidnik S.A.: Amendment 39–14282; Docket No. FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 31, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Gliders Are Affected by This AD?

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

Model	Serial Nos.
PW–5 ''Smyk'' ..	17.12.022 through 17.12.024.
PW–6U	78.02.07 through 78.02.10 and 78.03.01 through 78.03.03.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. The actions specified in this AD are intended to detect and replace any push-rod end that does not meet the minimum dimension, which could result in failure of the control system. This failure could lead to loss of control of the glider.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect for the minimum dimension (0.165 inches (in.) or 4.2 millimeter (mm)): (i) Any left side aileron, right side aileron, and airbrake push-rod end (part number (P/N) 511.00.20.00) for the Model PW–5 ''Smyk'' glider; and. (ii) Any aileron, airbake, and elevator control push-rod end (P/N 78.21.215.00.00) for the Model PW–6U glider.	Within the next 25 hours time-in-service (TIS) after October 31, 2005 (the effective date of this AD), unless already done.	*For the Model PW–5 ''Smyk'' glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003.
(2) Replace any push-rod end (P/N 511.00.20.00 or 78.21.215.00.00) that you find as a result of the inspection requried by paragraph (e)(1) of this AD that has a push-rod end that is less than the minimum dimension (0.165 in. or 4.2 mm).	Before further flight after the the inspection requried by paragraph (e)(1) of this AD.	*For the Model PW–5 ''Smyk'' glider:* Follow Communication Equipment PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin NumberBO–17–03–18, dated December 22, 2003.
(3) Do not install any push-rod end (P/N 511.00.20.00 or 78.21.215.00.00) with a dimension that is less than the minimum dimension (0.165 in. or 4.2 mm): (i) Any push-rod end for the left side aileron, right side aileron, or airbrake of the Model PW–5 Swidnik glider; and. (ii) Any push-rod end for the ailerons, airbake, or elevator control of the Model PW–6U glider.	As of October 31, 200 (the effective date of this AD).	*For the Model PW–5 ''Smyk'' glider:* Follow Communicaton Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003. *For the Model PW–6U glider:* Follow Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Is There Other Information That Relates to This Subject?

(g) Polish AD Numbers SP–0085–2003–A, dated December 22, 2003, and SP–0086–2003, dated December 22, 2003, also address the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–17–03–18, dated December 22, 2003, and Communication Equipment Factory PZL-Swidnik Mandatory Bulletin Number BO–78–03–06, dated December 22, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact PZL-Swidnik S.A., Polish Aviation Works, Al. Lotnikow Polskich 1, 21–045 Swidnik, Poland; telephone: 48 81 468 09 01 751 20 71; facsimile: 48 81 468 09 19 751 21 73. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–20802; Directorate Identifier 2005–CE–18–AD.

Issued in Kansas City, Missouri, on September 12, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18526 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 29334; Amendment No. 71–37]

Airspace Designations; Incorporation by Reference; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the effective date contained in a Final Rule that was published in the **Federal Register** on September 1, 2005 (70 FR 52012). That Final Rule amended Title 14 Code of Federal Regulations (14 CFR) part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FHA Order 7400.9N, Airspace Designations and Reporting Points.

DATES: These regulations are effective September 15, 2005. The incorporation by reference of FAA Order 7400.9N is approved by the Director of the Federal Register as of September 15, 2005, through September 15, 2006.

FOR FURTHER INFORMATION CONTACT: Tameka Bentley, telephone (202) 267–8783.

Issued in Washington, DC on September 16, 2005.

Michael Chase,

Branch Manager, Air Traffic and Airman and Airport Certification Law, Regulations Division.

[FR Doc. 05–18890 Filed 9–16–05; 3:48pm]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA93

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2005; TRICARE Dental Program

AGENCY: Office of the Secretary. DoD.

ACTION: Interim final rule.

SUMMARY: The Department is publishing this interim final rule to implement sections 711 and 715 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA–05), Public Law 108–375. Specifically, that legislation makes young dependents of deceased Service members eligible for enrollment in the TRICARE Dental Program when the child was not previously enrolled because of age, and authorizes post-graduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association to provide dental treatment to dependents who are 12 years of age or younger and who are covered by a dental plan established under 10 U.S.C. 1076a. This rule also corrects certain references in 32 CFR 199.13. The rule is being published as an interim final rule with comment period in order to comply with statutory effective dates. Public comments are invited and will be considered for possible revisions to the final rule.

DATES: This rule is effective November 21, 2005.

Comments: Written comments received at the address indicated below by November 21, 2005 will be accepted. Because of staff and resource limitations, we can only accept comments by mail or electronic mail (e-mail). We are unable to accept comments by facsimile (FAX) transmission. Send e-mail comments to *TDP.rule@tma.osd.mil* Mail written comments to the following address only: TRICARE Management Activity, TRICARE Operation/Dental Division, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Attention: Col. Gary C. Martin, Director. Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

FOR FURTHER INFORMATION CONTACT: Col. Gary C. Martin, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, telephone (703) 681–0039. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Background

Opportunity for Young Child Dependent of Decease Member To Become Eligible for Enrollment in a TRICARE Dental Plan

Currently, military members may enroll dependent children of any age in the TRICARE Dental Progam (TDP), but many members choose not to enroll young children until they are automatically enrolled at four years of age. Unfortunately, when a member on active duty for a period of more than thirty days or a member of the Ready Reserve (*i.e.*, Selected Reserve and Individual Ready Reserve) dies, dependent children less than four years of age who are not enrolled in the TDP at the time of the member's death are ineligible for enrollment for the three-year TDP survivor's benefit. The NDAA for FY05 corrects this inequity by giving young dependent children of deceased Service members the opportunity to become eligible for enrollment in the TDP although they were not previously enrolled due to their age.

Professional Accreditation of Military Dentists

Currently, section 199.13(a)(2)(iii) of this Part excludes dependents of active duty, Selected Reserve and individual Ready Reserve members enrolled in the TRICARE Dental Program (TDP) from obtaining benefit services provided by the TDP in military dental care facilities except for emergency treatment, dental care provided outside the United States, and services incidental to non-covered services. Due to insufficient numbers of pediatric patients available for treatment in DoD's training facilities, the uniformed services faced significant problems with program accreditation and pediatric dental training. The Services had difficulty maintaining accreditation of post-graduate training programs because of a lack of pediatric dental patients with the proper dental case mix required for training. in addition, without adequate case numbers and case complexity, residents who at completion of their training were assigned overseas were not always fully trained to manage and treat pediatric dental patients.

Therefore, section 715 of the NDAA FY 05 provides the uniformed services with authority to maintain American Dental Association accreditation standards for certain military dental specialty training programs that require treatment of pediatric patients and to provide pediatric training to meet requirements for the delivery of authorized dental care to children accompanying sponsors at OCONUS locations. The statute authorizes the Services to treat in their facilities a limited number of pediatric dental patients enrolled in the TDP. The Services have estimated their pediatric patient load requirements to sustain training facilities at 500–600 patients annually per Service. only those patients age 12 years or younger meeting training needs and accepted for care in DoD's training programs will be treated in those programs to the maximum of 2,000 patients annually across DoD. To ensure strict compliance with the amended statute, Health Affairs will allocate specific numbers of patient training cases to each Service POC. Service POCs will implement registries to track the number of patients served on a daily basis to ensure that the respective patient case caps are not exceeded. Each Service will forward a semi-annual report to the Dental Care Division, TRICARE Management Activity. An annual report will be submitted at the end of each fiscal year to the Assistant Secretary of Defense for Health Affairs.

II. Regulatory Procedures

Executive Order (EO) 12866

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This rule is not an economically significant regulatory action and will not have a significant impact on a substantial number of small entities for purposes of the RFA, thus this interim final rule is not subject to any of these requirements. This rule, although not economically significant under Executive Order 12866, is a significant rule under Executive Order 12866 and has been reviewed by the Office of Management and Budget. This rule is being issued as an interim final rule, with comment period, as an exception to our standard practice of soliciting public comments

prior to issuance. This is because the effective date of the changes to these statutes was October 28, 2004. The rule changes the regulation to conform to the new statutory entitlement. Based on these statutory requirements, the Assistant Secretary of Defense (Health Affairs) has determined that following the standard practice in this case would be unnecessary, impractical and contrary to the public interest. Public comments are invited. All comments will be carefully considered. A discussion of the major issues received by public comments will be included with the issuance of the final rule.

Paperwork Reduction Act

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

List of Subjects in 32 CFR Part 199

Claims, Dental Program, Dental Health, Health care, Health insurance, Military personnel.

■ For the reasons set out in the preamble, the Department of Defense amends 32 CFR part 199 as follows:

PART 199—[AMENDED]

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.13 is amended by revising paragraphs (a)(2)(iii), (c)(2)(i)(a)(*2*) and (c)(3)(ii)(E)(*2*), and adding paragraphs (a)(2)(iv) and (i) to read as follows:

§ 199.13 TRICARE Dental Program.

(a) * * *

(2) * * *

(iii) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment, dental care provided outside the United States, services incidental to noncovered services, and services provided under paragraph (a)(2)(iv), dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TDP may not obtain those services that are benefits of the TDP in military dental care facilities, as long as those covered benefits are available for cost-sharing under the TDP. Enrolled dependents of active duty, Selected Reserve and Individual Ready Reserve members may continue to obtain noncovered services from military dental care facilities subject to the provisions for space available care.

(iv) *Exception to the exclusion of services performed in military dental care facilities.*

(A) Dependents who are 12 years of age or younger and are covered by a dental plan established under this section may be treated by postgraduate dental residents in a dental treatment facility of the uniformed services under a graduate dental education program accredited by the American Dental Association if

(*1*) Treatment of pediatric dental patients is necessary in order to satisfy an accreditation standard of the American Dental Association that is applicable to such program, or training in pediatric dental care is necessary for the residents to be professionally qualified to provide dental care for dependent children accompanying members of the uniformed services outside the United States; and

(*2*) The number of pediatric patients at such facility is insufficient to support satisfaction of the accreditation or professional requirements in pediatric dental care that apply to such programs or students.

(B) The total number of dependents treated in all facilities of the uniformed services under paragraph (a)(2)(iv) in a fiscal year may not exceed 2,000.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(A) * * *

(*2*) Child. To be eligible, the child must be unmarried and meet one of the requirements set forth in section 199.3(b)(2)(ii)(A)–(F) or 199.3(b)(2)(ii)(H).

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(E) * * *

(*2*) *Continuation of eligibility.* Eligible dependents of active duty members while on active duty for a period of more than 30 days and eligible dependents of members of the Ready Reserve (i.e., Selected Reserve or Individual Ready Reserve, as specified in 10 U.S.C. 10143 and 10144(b) respectively), shall be eligible for continued enrollment in the TDP for up to three (3) years from the date of the member's death, if, on the date of the death of the member, the dependent is enrolled in the TDP, or is not enrolled by reason of discontinuance of a former enrollment under paragraphs (e)(3)(ii)(E)(*4*)(*ii*) and (c)(3)(ii)(E)(*4*)(*iii*) of this section, or is not enrolled because the dependent was under the minimum age for enrollment at the time of the member's death. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the three-year period of continuous enrollment, the government will pay both the Government and the beneficiary's portion of the premium share.

* * * * *

(i) *Implementing Instructions.* The Director, TRICARE Management Activity or designee may issue TRICARE Dental Program policies, standards, and criteria as may be necessary to implement the intent of this section.

* * * * *

Dated: September 14, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–18753 Filed 9–20–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2005–22429]

RIN 1625–AA11

Safety Zones; Sector New Orleans; Barges

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones on the navigable waters of Sector New Orleans surrounding barges that have sustained damage requiring salvage operations during Hurricane Katrina. This action is necessary to provide for the safety of life and property during salvage operations, as well as to minimize effects on the navigable waters of Sector New Orleans.

DATES: This rule is effective from September 19, 2005 through December 31, 2005.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2005–22429 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this

docket on the Internet at *http://dms.dot.gov.*

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. Publishing a NPRM would be contrary to the public interest, as there is an immediate need to quickly and safely remove damaged barges from the navigable waterways within Sector New Orleans.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This safety zone is needed immediately, in order to re-establish safe and efficient navigation within the navigable waterways.

Background and Purpose

On August 29, 2005, Hurricane Katrina struck the Gulf Coasts of Louisiana, Mississippi, and Alabama, causing severe damage throughout the area. The severity of the damage is still not fully known; however we are aware of a large number of barges that have been damaged and strewn throughout the waterways within the boundaries of Sector, New Orleans. Some of these barges are directly interfering with waterway traffic, while others present environmental or safety hazards. It is imperative that salvage operations begin on these barges in an orderly and efficient manner.

Discussion of Rule

This temporary rule establishes safety zones around those barges located in the waters within Sector New Orleans that sustained damage during Hurricane Katrina, when the damage was severe enough to require salvage operations. This temporary rule regulates salvage operations within those zones. It requires that a salvage plan be submitted to the COTP prior to beginning salvage operations on any Coast Guard inspected barge, as well as on any uninspected barge that is currently affecting waterway traffic. Additionally, for any barge requiring salvage operations that will affect waterway traffic, a salvage plan must be submitted to the COTP New Orleans for approval.

For those uninspected barges that are not affecting the navigation channel or vessel traffic, this temporary final rule requires that the COTP be notified when salvage operations begin and end, even though a salvage plan is not required.

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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This is because the Coast Guard will allow barge owners and operators to salvage damaged barges. The Coast Guard is requiring the submission of salvage plans in order to ensure that these operations proceed smoothly, without having a detrimental effect on the navigable waterways within Sector New Orleans.

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.

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act.

Assistance for Small Entities

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

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

Collection of Information

The Office of Management and Budget has exempted this rule from the requirements of the Paperwork Reduction Act due to the emergency nature of the rule.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. The Act does not require an assessment in the case of a rule issued without prior notice and public comment. Nevertheless, the Coast Guard does not expect this rule to result in such an expenditure. We discuss this rule's effects elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian

tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction, from further environmental documentation. This rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T08–999 to read as follows:

§ 165.T08–999 Safety zones; Sector New Orleans.

(a) Location. The following areas are safety zones:

(1) A 25-yard radius surrounding all damaged barges located in navigable waters within Sector New Orleans.

(b) Definitions.

(1) The *Captain of the Port New Orleans* means the Commander, Coast Guard Sector New Orleans.

(2) *Damaged barge* means a barge requiring salvage operations.

(c) Regulations.

(1) Salvage operations may not begin on any Coast Guard inspected barge located within a safety zone established by paragraph (a) of this section until the Captain of the Port New Orleans, or his designee, has approved a salvage plan for that barge.

(2) Salvage operations may not begin on any uninspected barge located within a safety zone established by paragraph (a) of this section that is affecting waterway traffic until the Captain of the Port New Orleans, or his designee, has approved a salvage plan for that barge.

(3) The Captain of the Port New Orleans, or his designee, must approve a salvage plan for any barge located within a safety zone established by paragraph (a) of this section when salvage operations on that barge will affect waterway traffic.

(4) The salvage plan shall provide the information contained in the Brownwater Salvage Checklist. To receive the checklist, contact the Coast Guard Incident Command Post (ICP) in Alexandria, Virginia:

(i) Via phone at: (318) 443–2084, (318) 448–5351, or (318) 443–0651;

(ii) Via fax at: (318) 443–2573; or

(iii) Via e-mail at: *secnolasalvage@yahoo.com.*

(5) The Captain of the Port New Orleans, or his designee, must be notified when salvage operations commence and are completed on uninspected barges located within a safety zone established by paragraph (a) of this section but not affecting the navigation channel or vessel traffic.

(d) The salvage plan required in paragraph (c) above should be faxed to Coast Guard Incident Command Post (ICP) in Alexandria, LA at (318) 443–2573, Attention: Salvage Group. You may contact the Salvage Operations Department at the ICP at (318) 443–2084, (318) 448–5351, or (318) 443–0651 for more information.

(e) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State and local agencies.

(f) Effective period. This section is effective from September 19, 2005 through December 31, 2005.

Dated: September 19, 2005.

Steve Venckus,

Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, United States Coast Guard.

[FR Doc. 05–18966 Filed 9–19–05; 1:18 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 174

[OPP–2005–0211; FRL–7735–4]

Bacillus Thuringiensis Cry34Ab1 and Cry35Ab1 Proteins and the Genetic Material Necessary for Their Production in Corn; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn on corn, field; corn, sweet; and corn, pop when applied/used as a plant–incorporated protectant. Mycogen Seeds c/o Dow AgroSciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the

need to establish a maximum permissible level for residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn.

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0211. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: *mendelsohn.mike@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 code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit I. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 174 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of August 31, 2004 (69 FR 53060) (FRL–7369–7), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3F6785) by Mycogen Seeds c/o Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. The petition requested that a temporary exemption from the requirement of a tolerance be established for residues of *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn. This notice included a summary of the petition prepared by the petitioner Mycogen Seeds c/o Dow AgroSciences LLC. One comment was received from a private citizen who opposed issuance of a final rule. She expressed concern regarding Dow's record, genetically modified corn, the impact that killing rootworm would have on the environment, and that the notice of filing mentioned ''studies'' without giving a specific number. The Agency understands and recognizes that some individuals believe that genetically modified crops and food should be banned completely. Corn rootworms are a significant agricultural pest and are extensively treated in the United States. Pursuant to its authority under the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA has conducted a comprehensive assessment of the Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn. EPA has concluded that there is a reasonable certainty that no harm will result from dietary exposure to these proteins as expressed in genetically modified corn. Specific studies were listed in the administrative material provided in the docket.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acute oral toxicity data have been submitted demonstrating the lack of mammalian toxicity at high levels of exposure to the pure Cry34Ab1 and Cry35Ab1 proteins separately and combined. These data demonstrate the safety of the products at levels well above maximum possible exposure levels that are reasonably anticipated in the crops. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which these plant-incorporated protectants were derived (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study, to verify the observed effects and clarify the source of these effects (Tiers II and III).

Three acute oral toxicity studies on Cry34Ab1 and Cry35Ab1 in mice were submitted, which indicated that these proteins are non-toxic to humans.

In an oral toxicity study of Cry34Ab1 alone, Cry34Ab1 produced from microbial culture was administered to five male mice (5,000 milligrams/kilogram (mg/kg) body weight) by oral gavage as a 20% mixture in a 0.5% aqueous methylcellulose vehicle. All animals survived the 2–week study. No clinical signs were noted for any animals during the study. An initial weight loss was observed in three mice at test days 1 and 2, but they gained weight for the remainder of the study. The two other animals gained weight throughout the study. No treatment-related gross pathologic changes were observed during the study. Under the conditions of this study, the acute oral LD_{50} for the test substance in male CD-1 mice is greater than 5,000 mg/kg. Since the test substance contained Cry34Ab1 at 54% purity, the acute oral LD_{50} for the pure Cry34Ab1 protein is greater than 2,700 mg/kg.

In an oral toxicity study of Cry35Ab1 alone, Cry35Ab1 produced from microbial culture was administered to five male mice (5,000 mg/kg body weight) by oral gavage as a 20% mixture in a 0.5% aqueous methylcellulose vehicle. All animals survived the 2–week study. No clinical signs were noted for any animal during the study. An initial weight loss was observed in two mice at test days 1 and 2, but they gained weight for the remainder of the study. One animal had fluctuating body weight. The other two animals gained weight throughout the study. No treatment-related gross pathologic changes were observed during the study. Under the conditions of this study, the acute oral LD_{50} for the test substance in male CD-1 mice is greater than 5,000 mg/kg. Since the test substance contained Cry35Ab1 at 37% purity, the acute oral LD_{50} for the pure Cry35Ab1 protein is greater than 1,850 mg/kg.

Finally, in an oral toxicity of Cry34Ab1 and Cry35Ab1 combined, a mixture of the microbially produced Cry34Ab1 and Cry35Ab1 proteins (5,000 mg test material, containing 482 mg pure Cry34Ab1 and 1,520 mg pure Cry35Ab1 (corresponding to an equimolar ratio), per kg body weight) was administered by oral gavage to five female and five male mice as a 20% mixture in 0.5% aqueous methylcellulose. All animals survived the 2–week study. One female mouse exhibited protruding or bulging eyes on days 6 and 7, but this resolved thereafter. This observation was not attributed to the treatment as it was an isolated observation (i.e., no other animals exhibited this). No other clinical signs were noted for any animals during the study. An initial weight loss was observed in two mice at test days 1 and 2, but both gained weight for the remainder of the study. All other animals gained weight throughout the study. No treatment related gross pathologic changes were noted. Under the conditions of the study, the acute oral LD_{50} of the test material in male and female CD-1 mice is greater than 5,000 mg/kg body weight, corresponding to 2,000 mg/kg of an equimolar ratio of the pure proteins.

When proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the Cry34Ab1 and Cry35Ab1 proteins are not considered toxic. Further, amino acid sequence comparisons showed no similarity between the Cry34Ab1 and Cry35Ab1 proteins to known toxic proteins available in public protein data bases.

Since Cry34Ab1 and Cry35Ab1 are proteins, allergenic potential was also considered. Currently, no definitive tests for determining the allergenic potential of novel proteins exist. Therefore, EPA uses a weight-of-the-evidence approach where the following factors are considered: Source of the trait; amino acid sequence similarity with known allergens; prevalence in food; and biochemical properties of the protein, including *in vitro* digestibility in simulated gastric fluid (SGF) and glycosylation. Current scientific knowledge suggests that common food allergens tend to be resistant to degradation by acid and proteases; may be glycosylated, and can be present at high concentrations in the food. In the past, EPA has also considered heat stability in assessing allergenicity potential; however, the FIFRA Scientific Advisory Panel at a March 1–2, 2005 meeting stated that heat stability based on a bioactivity assay is of minimal to no value in predicting the allergenicity potential of novel proteins, and EPA agrees. Therefore, EPA did not consider heat stability of these proteins in its weight-of-evidence approach.

1. *Source of the trait. Bacillus thuringiensis* is not considered to be a source of allergenic proteins.

2. *Amino acid sequence*. A comparison of amino acid sequences of Cry34Ab1 and Cry35Ab1 with known allergens showed no overall sequence similarities or homology at the level of eight contiguous amino acid residues.

3. *Prevalence in food*. Expression level analysis indicated that the proteins are present at relatively low levels in corn; on a dry weight basis, Cry34Ab1 is present at a concentration of approximately 50 nanograms/milligram (ng/mg) in grain from Event 59122–7, and Cry35Ab1 is present at a concentration of approximately 1 ng/mg in grain from Event 59122–7. Thus, expression of the Cry34Ab1 and Cry35Ab1 proteins in corn kernels has been shown to be in the parts per million range.

4. *Digestibility*. Two *in vitro* digestibility studies were conducted to determine the stability of the Cry34Ab1 and Cry35Ab1 proteins in simulated gastric fluid (i.e., an acid environment containing pepsin; SGF). In the first *in vitro* digestibility study, the proteins were incubated in SGF (pepsin concentration: 3.2 milligrams/milliliter (mg/mL); pH 1.2; 37° C) with a pepsin to protein substrate ratio of approximately 20:1, molecule/molecule (mol/mol) (equivalent to 60:1, w/w for Cry34Ab1 and 17:1, w/w for Cry35Ab1). Samples taken at 1, 5, 7, 15, 20, 30, and 60 minutes were analyzed by sodium dodecyl sulfate polyacrylamide gel electrophoresis (SDS-PAGE) and western blot. Cry35Ab1 was no longer visible at the 5–minute time-point using both SDS-PAGE stained with Coomassie Brilliant Blue and western blot detection. Cry34Ab1 was visible on the stained gel for the 15–minute sample,

but not in later sample time points. In the western blot analysis, Cry34Ab1 was visible in the 20–minute sample, but not in later sample time points. In conclusion, this first study showed that Cry34Ab1 was digested within 30 minutes and Cry35Ab1 was digested within 5 minutes in SGF under the conditions of the study.

Because Cry34Ab1 appeared to be somewhat resistant to SGF in the study described above that used the time-to-disappearance endpoint, Dow submitted a second study on the *in vitro* digestibility of Cry34Ab1 in SGF using a kinetic approach. The digestion was performed under the same conditions as the previous study except that reaction mixtures were shaken during incubation, and samples were analyzed at 1, 2, 3, 5, 7.5, 10, 15, and 20 minutes. The previous study on pepsin digestibility of Cry34Ab1 and Cry35Ab1, as well as other pepsin digestibility studies used in allergenicity assessments, focused on the time required for the protein to become undetectable, and therefore, the results are dependent on the detection limit of the analytical method used. In this second study, Dow determined the rate of pepsin digestion of Cry34Ab1 by measuring the relative amounts of Cry34Ab1 at each of the time points based on SDS-PAGE densitometry estimates. Under the conditions of the study, the rate of decay fit a first-order model (with respect to Cry34Ab1 concentration), and Dow estimated the DT_{50} (half-life) and DT_{90} (time until 90% decay) to be 1.9 minutes and 6.2 minutes, respectively. In this experiment, Cry34Ab1 was visible on gels and blots in 15–minute time point samples but not in 20–minute time point samples.

Because the digestibility of Cry34Ab1 was assessed using a different method (i.e., the kinetic approach) rather than the typical end-point method that has been used previously, comparison studies using the kinetic approach to assess the digestibility of known allergens and non-allergens were submitted to validate the method and allow comparison of the digestibility of Cry34Ab1 with known allergens and non-allergens. In the comparison study where the conditions used were the same as those used in the kinetic study on the digestibility of Cry34Ab1, two allergens and two non-allergens were shown to digest similarly to Cry34Ab1. From these studies and published studies, EPA concludes that Cry35Ab1 is rapidly digested and Cry34Ab1 is digested at a moderate rate in SGF; Cry34Ab1 appears to digest slower than previously registered proteins and many other proteins that are not considered allergens but faster than most previously tested allergens.

On March 1–2, 2005, EPA held a FIFRA Scientific Advisory Panel (SAP) meeting, *http://www.epa.gov/oscpmont/sap/#march*, to address the scientific issues that arose during the human health safety assessment of Cry34Ab1 and Cry35Ab1. EPA asked the SAP to comment on EPA's allergenicity assessment of Cry34Ab1. The SAP agreed with EPA's preliminary assessment that the allergenicity potential of Cry34Ab1 is low. However, the Panel based its conclusion in part on statements made by Dow that Cry34Ab1 and Cry35Ab1 do not aggregate in solution. The Panel was concerned that if the proteins were to aggregate, protease binding sites could be masked, and the rate of digestion could be slower than was observed for the individual proteins. Therefore, EPA asked Dow to submit data supporting the claim that Cry34Ab1 and Cry35Ab1 do not associate with one another in solution.

To support the digestibility studies on the individual proteins, Dow submitted a study using size exclusion chromatography, which demonstrated that Cry34Ab1 and Cry35Ab1 do not associate with one another in solution under acidic conditions.

5. *Glycosylation*. Cry34Ab1 and Cry35Ab1 expressed in corn were shown not to be glycosylated.

6. *Conclusion*. Considering all of the available information: (1) Cry34Ab1 and Cry35Ab1 originate from a non-allergenic source;(2) Cry34Ab1 and Cry35Ab1 have no overall sequence similarities or homology at the level of eight contiguous amino acid residues with known allergens; (3) Cry34Ab1 and Cry35Ab1 will only be present at low levels in food; (4) Cry35Ab1 is rapidly digested in SGF, and Cry34Ab1 is digested at a moderate rate in SGF; and (5) Cry34Ab1 and Cry35Ab1 are not glycoslyated when expressed in maize. EPA has concluded that the potential for the Cry34Ab1 and Cry35Ab1 proteins to be food allergens is minimal. The FIFRA SAP that met on March 1–2, 2005, agreed with this conclusion regarding the allergenicity potential of Cry34Ab1. There were no triggers to raise concern about the allergenicity of Cry35Ab1, so the SAP was not asked to comment specifically on Cry35Ab1. As noted above, toxic proteins typically act as acute toxins with low dose levels. Therefore, since no effects were shown to be caused by the plant-incorporated protectants, even at relatively high dose levels, the Cry34Ab1 and Cry35Ab1 proteins are not considered toxic.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

The Agency has considered available information on the aggregate exposure levels of consumers (and major identifiable subgroups of consumers) to the pesticide chemical residue and to other related substances. These considerations include dietary exposure under the tolerance exemption and all other tolerances or exemptions in effect for the plant-incorporated protectants chemical residue, and exposure from non-occupational sources. Exposure via the skin or inhalation is not likely since the plant-incorporated protectants are contained within plant cells, which essentially eliminates these exposure routes or reduces these exposure routes to negligible. Exposure via residential or lawn use to infants and children is also not expected because the use sites for the Cry34Ab1 and Cry35Ab1 proteins are all agricultural for control of insects. Oral exposure, at very low levels, may occur from ingestion of processed corn products and, potentially, drinking water. However, oral toxicity testing showed no adverse effects. Furthermore, the expression of the Cry34Ab1 and Cry35Ab1 proteins in corn kernels has been shown to be in the parts per million range, which makes the expected dietary exposure several orders of magnitude lower than the amounts of Cry34Ab1 and Cry35Ab1 proteins shown to have no toxicity. Therefore, even if negligible aggregate exposure should occur, the Agency concludes that such exposure would result in no harm due to the lack of mammalian toxicity and low potential for allergenicity demonstrated for the Cry34Ab1 and Cry35Ab1 proteins.

V. Cumulative Effects

Pursuant to FFDCA section 408(b)(2)(D)(v), EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common mechanism of toxicity. Because there is no indication of mammalian toxicity, resulting from the

plant-incorporated protectants, we conclude that there are no cumulative effects for the Cry34Ab1 and Cry35Ab1 proteins.

VI. Determination of Safety for U.S Population, Infants and Children

A. Toxicity and Allergenicity Conclusions

The data submitted and cited regarding potential health effects for the Cry34Ab1 and Cry35Ab1 proteins include the characterization of the expressed Cry34Ab1 and Cry35Ab1 proteins in corn, as well as the acute oral toxicity, and *in vitro* digestibility of the proteins. The results of these studies were determined applicable to evaluate human risk, and the validity, completeness, and reliability of the available data from the studies were considered.

Adequate information was submitted to show that the Cry34Ab1 and Cry35Ab1 proteins test material derived from microbial cultures was biochemically and, functionally similar to the protein produced by the plant-incorporated protectant ingredients in corn. Production of microbially produced protein was chosen in order to obtain sufficient material for testing.

The acute oral toxicity data submitted support the prediction that the Cry34Ab1 and Cry35Ab1 proteins would be non-toxic to humans. As mentioned above, when proteins are toxic, they are known to act via acute mechanisms and at very low dose levels (Sjoblad, Roy D., et al. ''Toxicological Considerations for Protein Components of Biological Pesticide Products,'' *Regulatory Toxicology and Pharmacology* 15, 3–9 (1992)). Since no effects were shown to be caused by the Cry34Ab1 and Cry35Ab1 proteins, even at relatively high dose levels, the Cry34Ab1 and Cry35Ab1 proteins are not considered toxic. Basing this conclusion on acute oral toxicity data without requiring further toxicity testing and residue data is similar to the Agency position regarding toxicity and the requirement of residue data for the microbial *Bacillus thuringiensis* products from which these plant-incorporated protectants were derived. (See 40 CFR 158.740(b)(2)(i)). For microbial products, further toxicity testing and residue data are triggered by significant acute effects in studies such as the mouse oral toxicity study to verify the observed effects and clarify the source of these effects (Tiers II and III).

Cry34Ab1 and Cry35Ab1 proteins residue chemistry data were not required for a human health effects assessment of the subject plant-incorporated protectant ingredients because of the lack of mammalian toxicity. However, data submitted demonstrated low levels of the Cry34Ab1 and Cry35Ab1 proteins in corn tissues.

Since Cry34Ab1 and Cry35Ab1 are proteins, their potential allergenicity is also considered as part of the toxicity assessment. Considering all of the available information (1) Cry34Ab1 and Cry35Ab1 originate from a non-allergenic source; (2) Cry34Ab1 and Cry35Ab1 have no overall sequence similarities or homology at the level of eight contiguous amino acid residues with known allergens; (3) Cry34Ab1 and Cry35Ab1 are not glycoslyated when expressed in maize; (4) Cry34Ab1 and Cry35Ab1 will only be present at low levels in food; and (5) Cry35Ab1 is rapidly digested in SGF, and Cry34Ab1 is digested at a moderate rate in SGF; EPA has concluded that the potential for the Cry34Ab1 and Cry35Ab1 proteins to be food allergens is minimal. The FIFRA Scientific Advisory Panel (SAP) that met on March 1–2, 2005 agreed with this conclusion regarding the allergenicity potential of Cry34Ab1. There were no triggers to raise concern about the allergenicity of Cry35Ab1, so the SAP was not asked to comment specifically on Cry35Ab1.

Neither available information concerning the dietary consumption patterns of consumers (and major identifiable subgroups of consumers including infants and children) nor safety factors that are generally recognized as appropriate for the use of animal experimentation data were evaluated. The lack of mammalian toxicity at high levels of exposure to the Cry34Ab1 and Cry35Ab1 proteins, as well as the minimal potential to be a food allergen demonstrate the safety of the product at levels well above possible maximum exposure levels anticipated in the crop.

The genetic material necessary for the production of the plant-incorporated protectant active ingredients are the nucleic acids (DNA, RNA) which comprise genetic material encoding these proteins and their regulatory regions. The genetic material (DNA, RNA), necessary for the production of the Cry34Ab1 and Cry35Ab1 proteins have been exempted under the blanket exemption for all nucleic acids (40 CFR 174.475).

B. Infants and Children Risk Conclusions

FFDCA section 408(b)(2)(C) provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity.

In addition, FFDCA section 408(b)(2)(C) also provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children.

In this instance, based on all the available information, the Agency concludes that there is a finding of no toxicity for the Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production. Thus, there are no threshold effects of concern and, as a result, the provision requiring an additional margin of safety does not apply. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply.

C. Overall Safety Conclusion

There is a reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to the Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production. This includes all anticipated dietary exposures and all other exposures for which there is reliable information.

The Agency has arrived at this conclusion because, as discussed above, no toxicity to mammals has been observed, nor any indication of allergenicity potential for the plant-incorporated protectants.

VII. Other Considerations

A. Endocrine Disruptors

The pesticidal active ingredients are proteins, derived from sources that are not known to exert an influence on the endocrine system. Therefore, the Agency is not requiring information on the endocrine effects of the plant-incorporated protectants at this time.

B. Analytical Method(s)

Validated enzyme-linked immunosorbent assays for the detection and quantification of Cry34Ab1 and Cry35Ab1 in corn tissue have been submitted and found acceptable by the Agency.

C. Codex Maximum Residue Level

No Codex maximum residue levels exist for the plant-incorporated protectants *Bacillus thuringiensis* Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for its production in corn.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0211 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0211 , to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to

include regulations that have ''substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 174

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 29, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 174—[AMENDED]

■ 1. The authority citation for part 174 continues to read as follows:

Authority: 7 U.S.C. 136–136y; 21 U.S.C. 346a and 371.

■ 2. Section 174.457 is added to subpart W to read as follows:

§ 174.457 Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn; exemption from the requirement of a tolerance.

Bacillus thuringiensis Cry34Ab1 and Cry35Ab1 proteins and the genetic material necessary for their production in corn are exempted from the requirement of a tolerance when used as plant-incorporated protectants in the food and feed commodities of corn; corn, field; corn, sweet; and corn, pop.

[FR Doc. 05–18582 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0248; FRL–7736–1]

Myclobutanil; Re-Establishment of a Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolite in or on artichoke, globe at 1.0 parts per million (ppm) for an additional 2½ year period. This tolerance will expire and is revoked on December 31, 2007. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on artichoke, globe. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0248.

All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Stacey Milan Groce, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–2505; e-mail address:*milan.stacey@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of

entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of September 16, 1998 (63 FR 49472) (FRL–6025–1), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), it established a time-limited tolerance for the combined residues of myclobutanil in or on artichoke, globe at 1.0 ppm, with an expiration date of July 31, 2000. This time-limited tolerance was subsequently extended via **Federal Register** final rules published on: September 15, 2000 (65 FR 55921) (FRL–6742–6), which extended the tolerance until July 31, 2002, and July 17, 2002 (67 FR 46878) (FRL–7183–6), which extended the tolerance until June 30, 2005. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on artichoke, globe for this year's growing season due to the ongoing existence of powdery mildew, which results in significant crop loss, as well as the difficulty growers experience trying to control the pathogen using the currently available alternative fungicides. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of myclobutanil on artichoke, globe for control of powdery mildew in California.

EPA recently assessed the potential risks presented by residues of myclobutanil in or on artichoke, globe as part of the dietary exposure estimates in the human health risk assessment for the proposed section 18 use of myclobutanil on soybeans. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of August 24, 2005 (70 FR 49499) (FRL–7731–2). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6) of the FFDCA. Therefore, the time-limited tolerance is extended for an additional 2½ year period. Although this tolerance will expire and is revoked on December 31, 2007, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on artichoke, globe after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0248 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0248, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a

copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 petition under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.443 [Amended]

■ 2. In § 180.443, by amending the table in paragraph (b) by amending the entry for ''artichoke, globe'' by revising the expiration/revocation date ''06/30/05'' to read ''12/31/07.''

[FR Doc. 05–18417 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0209; FRL–7732–5]

Aminopyridine, Ammonia, Chloropicrin, Diazinon, Dihydro-5-heptyl-2(3H)-furanone, Dihydro-5-pentyl-2(3H)-furanone, and Vinclozolin; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking specific tolerances and tolerance exemptions for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3H)-furanone, and dihydro-5-pentyl-2(3H)-furanone. EPA canceled food use registrations or deleted food uses from registrations following requests for voluntary cancellation or use deletion by the registrants, or non-payment of registration maintenance fees. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 39 tolerances and tolerance exemptions of which 33 count as tolerance reassessments toward the August, 2006 review deadline.

DATES: This regulation is effective September 21, 2005. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for thisaction under Docket identification (ID) number OPP–2005–0209. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of May 18, 2005 (70 FR 28497) (FRL–7713–8), EPA issued a proposed rule to revoke certain tolerances for residues of the bird repellent 4-aminopyridine, fungicides ammonia and vinclozolin, and insecticides chloropicrin, diazinon, dihydro-5-heptyl-2(3H)-furanone, and dihydro-5-pentyl-2(3H)-furanone. Also, the proposal of May 18, 2005 provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the FFDCA standards.

In this final rule, EPA is revoking these tolerances and tolerance exemptions because they pertain to uses which are either no longer current or registered under FIFRA in the United States. The tolerances and tolerance exemptions revoked by this final rule are no longer necessary to cover residues of the relevant pesticides in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

- Prior to EPA's issuance of a section 408(f) order requesting additional data

or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

- EPA independently verifies that the tolerance is no longer needed.
- The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

In response to the proposal published in the **Federal Register** of May 18, 2005 (70 FR 28497), EPA received two comments during the 60–day public comment period, as follows:

1. *Aminopyridine—comment by private citizen.* A private citizen stated opposition to any existing tolerances or tolerance exemptions for aminopyridine. The commenter stated that aminopyridine was dangerous, its products (avitrol) should not be on the market, and opposed its use as a bird repellent.

Agency response. On December 17, 2003 the registrant requested voluntary cancellation of the food uses of 4-aminopyridine. In the **Federal Register** notice of October 27, 2004 (69 FR 62666) (FRL–7683–7), EPA announced registration cancellations, including certain 4-aminopyridine (avitrol) registrations, for non-payment of year 2004 registration maintenance fees, and stated that cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005.

The private citizen's comment did not take issue with the Agency's conclusion that tolerances for 4-aminopyridine should be revoked. It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which FIFRA registrations no longer exist. However, cancellation orders will generally permit a registrant to sell or distribute existing pesticide stocks for 1–year after the date on which the fee was due, as described in the **Federal Register** Notice of October 27, 2004 (69 FR 62666).

No comments were received by the Agency concerning the following actions regarding 4-aminopyridine that were proposed on May 18, 2005 (70 FR 28497).

The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by January 15, 2006. Therefore, EPA is revoking the tolerances in 40 CFR 180.312 for residues of the bird repellent 4-aminopyridine in or on corn, forage; corn, field, grain; corn, pop, grain; corn, stover; corn, sweet, kernels plus cob with husks removed; and sunflower, seed; each with an expiration/revocation date of January 15, 2006.

Also, EPA is revising the commodity terminology in 40 CFR 180.312 to conform to current Agency practice as follows: ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage;'' ''corn, stover'' to ''corn, field, stover;'' ''corn, pop, stover;'' and ''corn, sweet, stover;'' and ''corn, sweet, kernels plus cob with husks removed'' to ''corn, sweet, kernel plus cob with husks removed.'' In addition, in 40 CFR 180.312, EPA is removing the ''(N)'' designation from all entries to conform to current Agency administrative practice (''(N)'' designation means negligible residues).

2. *Vinclozolin—Comment by UNILET.* A comment was received by EPA from the Union Nationale Interprofessionnelle des Legumes Transformes (UNILET), a trade organization in France concerned with the field of processed vegetables. UNILET stated that vinclozolin was more effective than other fungicides in the control of white mold, caused by *Sclerotinia sclerotiorum*, and described the disease as widespread over areas of green beans in France. UNILET also stated that white mold has a major effect on yield and effects quality to the extent that it is the main reason for green beans to be refused for processing in France.

Agency response. Under 40 CFR 180.380, the tolerance for vinclozolin residues of concern on succulent beans was set to expire on September 30, 2005. The proposal upon which UNILET commented was not to revoke the tolerance but to extend the revocation date from September 30 to November 30, 2005 in order to be consistent with a **Federal Register** Notice of August 22, 2001 (66 FR 44134) (FRL–6795–7). Thus, the comment is not relevant to this rulemaking. If the commenter desires a tolerance for use of vinclozolin on succulent beans, then the commenter should petition for a new tolerance per procedures in 40 CFR part 180, subpart B. In that regard, EPA notes the commenter's acknowledgement that other fungicides, such as thiophanate-methyl, iprodione, cyprodinil, and boscalid are available to control white mold on green beans. Considerations related to the beneficial impacts of a pesticide are cognizable under the FFDCA only in very narrow circumstances See 21 U.S.C. 346a(b)(2)(B).

In this final rule, EPA is extending the expiration/revocation date for the tolerance in 40 CFR 180.380(a) for vinclozolin residues of concern in or on bean, succulent from September 30 to November 30, 2005.

No comments were received by the Agency concerning the following actions regarding vinclozolin that were proposed on May 18, 2005 (70 FR 28497).

In the **Federal Register** notice of August 22, 2001 (66 FR 44134) (FRL–6795–7), EPA announced use cancellations for certain vinclozolin registrations, including uses of the fungicide vinclozolin on kiwi, chicory, lettuce, and succulent beans with a last date for legal use as January 30, 2004; January 30, 2004; November 30, 2005, and November 30, 2005, respectively. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated kiwi and chicory commodities to have cleared the channels of trade. Further, pursuant to FFDCA section 408(l)(5), treated lettuce and succulent bean commodities that have been legally treated on or before November 30, 2005 and whose residues are within the tolerance set to expire on that date, will not be considered adulterated, even if they have not yet cleared channels of trade. Therefore, EPA is revoking the tolerances in 40 CFR 180.380(a) for the combined residues of the fungicide vinclozolin and its metabolites containing the 3,5-dichloroaniline moiety in or on Belgian endive, tops and kiwifruit on the date of publication of the final rule; and also lettuce, head and lettuce, leaf; each with an expiration/revocation date of November 30, 2005.

Further, EPA is revising commodity terminology in 40 CFR 180.380 to conform to current Agency practice as follows: ''grape, (wine)'' to ''grape, wine.''

No comments were received by the Agency concerning the following.

3. *Ammonia.* Because there have been no active registered uses of ammonia on food since 1987, the associated tolerance exemptions are no longer needed. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.1003 for residues of the fungicide ammonia when used after harvest on grapefruit, lemons, oranges, and corn grain for feed use only.

4. *Chloropicrin.* Because there have been no active registrations of chloropicrin concerning post-harvest uses on grain since 1991, the associated tolerance exemptions are no longer needed. Also, the Agency believes that chloropicrin is not found in the formulation of other fumigant pesticides with active registrations for post-harvest use on grains. In addition, the Agency believes that it is unlikely that detectable residues of chloropicrin will be found in or on any raw agricultural commodity in formulations where it is

used as a warning agent (2% or less) due to its volatility.

Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.1008 for residues of chloropicrin when used as a fumigant after harvest on barley, buckwheat, corn (including popcorn), oats, rice, rye, grain sorghum, and wheat.

5. *Diazinon.* In the **Federal Register** notice of May 30, 2001 (66 FR 29310) (FRL–6785–2), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of July 19, 2001 (66 FR 37673)(FRL–6791–9) and made the registration cancellations and amendments effective on July 19, 2001, and registrant sale and distribution of existing stocks was permitted for 1 year; i.e., until July 19, 2002.

Also, in the **Federal Register** notice of September 13, 2001 (66 FR 47658) (FRL–6800–6), EPA announced the receipt of requests to voluntarily cancel and amend certain diazinon registrations. The Agency published the cancellation order in the **Federal Register** of November 15, 2001 (66 FR 57440)(FRL–6809–5) and made the registration cancellations and amendments effective on November 15, 2001, and registrant sale and distribution of existing stocks was permitted for 1 year; i.e., until November 15, 2002.

EPA believes that end users have had sufficient time, more than 2 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.153 for residues of the insecticide diazinon in or on alfalfa, fresh; alfalfa, hay; guar, seed; clover, forage; clover, hay; cotton, undelinted seed; cowpea; cowpea, forage; lespedeza; sorghum, forage; and sorghum, grain; and all revocations are effective on the date of publication of this final rule in the **Federal Register**.

Further, EPA is revising commodity terminology in 40 CFR 180.153 to conform to current Agency practice as follows: ''Banana (NMT 0.1 ppm shall be present in the pulp after peel is removed)'' to ''banana,'' ''corn, forage'' to ''corn, field, forage'' and ''corn, sweet, forage;'' ''corn, kernel plus cob with husks removed'' to ''corn, sweet, kernel plus cob with husks removed;'' ''endive (escarole)'' to ''endive;'' ''ginseng, root'' to ''ginseng, roots;'' ''hop'' to ''hop, dried cones;'' ''onion'' to ''onion, dry bulb'' and ''onion, green;'' ''peavine hay'' to ''pea, field, hay;'' ''peavines'' to ''pea, field, vines;'' ''pea with pods (determined on pea after removing any shell present when marketed)'' to ''pea, succulent;'' and ''rutabagas'' to ''rutabaga.''

Additional information can be found in the 2002 Diazinon Interim Reregistration Eligibility Decision (IRED). A printed copy of the diazinon IRED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000; internet at *http://www.ntis.gov/*. An electronic copy of the diazinon IRED is available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

6. *Dihydro-5-heptyl-2(3H)-furanone.* In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-heptyl-2(3H)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, 1 year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.528 for residues of the insecticide dihydro-5-heptyl-2(3H)-furanone in or on animal feed and processed food.

Also, EPA is amending paragraph (a)(1) in 40 CFR 180.539 and removing dihydro-5-heptyl-2(3H)-furanone from the tolerance exemption expression for d-Limonene.

7. *Dihydro-5-pentyl-2(3H)-furanone.* In the **Federal Register** notice of October 27, 2004 (69 FR 62666), EPA announced registration cancellations, including a certain dihydro-5-pentyl-2(3H)-furanone registration, for non-payment of year 2004 registration maintenance fees. The cancellation orders permitted registrants to sell and distribute existing stocks of the canceled products until January 15, 2005, 1 year after the date on which the fee was due. The Agency believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Therefore, EPA is revoking the tolerance exemptions in 40 CFR 180.529 for residues of the insecticide dihydro-5-pentyl-2(3H)-furanone in or on animal feed and processed food.

Also, EPA is amending paragraph (a)(1) in 40 CFR 180.539 and removing dihydro-5-pentyl-2(3H)-furanone from the tolerance exemption expression for d-Limonene.

B. What is the Agency's Authority for Taking this Action?

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

With the exception of certain tolerances for 4-aminopyridine and vinclozolin, for which EPA is revoking certain tolerances with specific expiration/revocation dates, the Agency is revoking these tolerances and tolerance exemptions, revising commodity terminology, and removing dihydro-5-heptyl-2(3H)-furanone and dihydro-5-pentyl-2(3H)-furanone from the tolerance expression in 40 CFR 180.539 for d-limonene, effective on the date of publication of this final rule in the **Federal Register**. With the exception of 4-aminopyridine and vinclozolin, the Agency believes that existing stocks of pesticide products labeled for the uses associated with the revoked tolerances have been completely exhausted and that treated commodities have cleared the channels of trade. EPA is revoking certain tolerances with expiration/revocation dates of January 15, 2006 for specific 4-aminopyridine tolerances and November 30, 2005 for tolerances of vinclozolin residues of concern on bean, succulent; lettuce, head; and lettuce, leaf. The Agency believes that these revocation dates allow users to exhaust stocks and allow sufficient time for

passage of treated commodities through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of September 6, 2005, EPA has reassessed over 7,430 tolerances. This document revokes a total of 39 tolerances of which 33 are counted as tolerance reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. For the purpose of tolerance reassessment, the commodity entry ''corn (including popcorn)'' in 40 CFR 180.1008 for chloropicrin represents two tolerances; i.e., corn (postharvest) and corn, pop, grain (postharvest). Therefore, it is counted herein as two revocations, and therefore two tolerance reassessments. In addition, while the corn, field, grain and corn, pop, grain tolerances for 4-aminopyridine are counted as two revocations, EPA counts them as one tolerance reassessment because the Agency counted them as one tolerance at the beginning of FQPA when these were listed in 40 CFR 180.312 as one tolerance; i.e., corn, grain. Finally, the vinclozolin tolerances were previously reassessed.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. The U.S. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/.* On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0209 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1.*Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV. A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0209, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

In this final rule EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.153 is amended by revising the table in paragraph (a)(1) to read as follows:

§ 180.153 Diazinon; tolerances for residues.

(a) * * * (1) * * *

Commodity	Parts per million
Almond	0.5
Almond, hulls	3.0
Apple	0.5
Apricot	0.5
Banana	0.2
Bean, lima	0.5
Bean, snap, succulent	0.5
Beet, garden, roots	0.75
Beet, garden, tops	0.7
Beet, sugar, roots	0.5
Beet, sugar, tops	10.0
Blackberry	0.5
Blueberry	0.5
Carrot, roots	0.75
Cattle, fat	0.7
Celery	0.7
Cherry	0.75
Citrus	0.7
Corn, field, forage	40.0
Corn, sweet, forage	40.0
Corn, sweet, kernel plus cob with husks removed	0.7
Cranberry	0.5
Cucumber	0.75
Endive	0.7
Fig	0.5
Filbert	0.5
Ginseng, roots	0.75
Grape	0.75
Hop, dried cones	0.75
Kiwifruit	0.75
Lettuce	0.7
Loganberry	0.75
Melon	0.75
Mushroom	0.75
Nectarine	0.5
Olive	1. 0
Onion, dry bulb	0.75
Onion, green	0.75
Parsley, leaves	0.75
Parsnip	0.5
Peach	0.7
Pear	0.5
Pea, field, hay	10.0
Pea, field, vines	25.0
Pea, succulent	0.5
Pepper	0.5
Pineapple	0.5
Plum, prune, fresh	0.5
Potato	0.1
Potato, sweet	0.1
Radicchio	0.7
Radish	0.5
Raspberry	0.5
Rutabaga	0.75
Sheep, fat	0.7
Sheep, meat (fat basis)	0.7
Sheep, meat byproducts (fat basis)	0.7
Spinach	0.7
Squash, summer	0.5
Squash, winter	0.75
Strawberry	0.5
Swiss chard	0.7
Tomato	0.75
Turnip, greens	0.75
Turnip, roots	0.5
Vegetable, brassica, leafy, group 5	0.7
Walnut	0.5
Watercress	0.7

* * * * *

■ 3. Section 180.312 is amended by revising paragraph (a) to read as follows:

§ 180.312 4-Aminopyridine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the bird repellent 4-aminopyridine in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Corn, field, forage	0.1	1/15/06
Corn, field, grain	0.1	1/15/06
Corn, field, stover	0.1	1/15/06
Corn, pop, grain	0.1	1/15/06
Corn, pop, stover	0.1	1/15/06
Corn, sweet, forage	0.1	1/15/06
Corn, sweet, kernel plus cob with husks removed	0.1	1/15/06
Corn, sweet, stover	0.1	1/15/06
Sunflower, seed	0.1	1/15/06

* * * * *

■ 4. Section 180.380 is amended by revising paragraph (a) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for grape (wine) as of July 30, 1997.

Commodity	Parts per million	Expiration/ Revocation Date
Bean, succulent	2.0	11/30/05
Canola, seed	1.0	11/30/08
Cattle, fat	0.05	11/30/08
Cattle, meat	0.05	11/30/08
Cattle, meat by-products	0.05	11/30/08
Egg	0.05	11/30/08
Goat, fat	0.05	11/30/08
Goat, meat	0.05	11/30/08
Goat, meat by-products	0.05	11/30/08
Grape, wine	6. 0	None
Hog, fat	0.05	11/30/08
Hog, meat	0.05	11/30/08
Hog, meat by-products	0.05	11/30/08
Horse, fat	0.05	11/30/08
Horse, meat	0.05	11/30/08
Horse, meat by-products	0.05	11/30/08
Lettuce, head	10.0	11/30/05
Lettuce, leaf	10.0	11/30/05
Milk	0.05	11/30/08
Poultry, fat	0.1	11/30/08
Poultry, meat	0.1	11/30/08
Poultry, meat byproducts	0.1	11/30/08
Sheep, fat	0.05	11/30/08
Sheep, meat	0.05	11/30/08
Sheep, meat by-products	0.05	11/30/08

* * * * *

§§ 180.528 and 180.529 [Removed]

■ 5. Sections 180.528 and 180.529 are removed.

■ 6. Section 180.539 is amended by revising paragraph (a)(1) to read as follows:

§180.539 d-Limonene; tolerances for residues.

(a) * * * (1) The insecticide d-limonene may be safely used in insect-repellent tablecloths and in insect-repellent strips used in food- or feed-handling establishments.

* * * * *

§§ 180.1003 and 180.1008 [Removed]

■ 7. Sections 180.1003 and 180.1008 are removed.

[FR Doc. 05–18579 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0160; FRL–7732–8]

Cyhexatin; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking, under the Federal Food, Drug, and Cosmetic Act (FFDCA) section 408(e)(1), all existing tolerances for residues of the insecticide/acaricide cyhexatin because they do not meet requirements of FFDCA section 408(b)(2). EPA canceled food use registrations for cyhexatin in 1989. Currently, EPA determined that acute dietary risks from use of cyhexatin on commodities for which import tolerances exist exceed the Agency's level of concern. However, EPA also determined that if the only cyhexatin tolerance is for orange juice, there is a reasonable certainty that no harm to any population subgroup will result from exposure to cyhexatin treated oranges. Because manufacturers support a cyhexatin tolerance on orange juice for purposes of importation and the Agency has made a determination of safety for such a tolerance, EPA is establishing, concurrent with the revocation of the citrus fruit group tolerance, an individual time-limited tolerance on orange juice. The regulatory actions in this document contribute toward the Agency's tolerance reassessment requirements of the FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996. By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. The regulatory actions in this document pertain to the revocation of 41 tolerances which count as tolerance reassessments toward the August, 2006 review deadline.

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing requestfollow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0160. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of July 27, 2005 (70 FR 43368) (FRL–7723–5), EPA issued a proposed rule to revoke all existing tolerances for residues of the insecticide/acaricide cyhexatin and establish a time-limited tolerance on orange juice. Also, the proposal of July 27, 2005 provided a 30–day comment period which invited public comment.

In response to the proposal published in the **Federal Register** of July 27, 2005 (70 FR 43368), EPA received two comments during the 30–day public comment period, as follows:

Comments by private citizens. A private citizen stated opposition to the sale and use of cyhexatin, and stated that cyhexatin tolerances should not be extended for use on any food commodity. Another private citizen asked whether the final rule actions would mean that any amount of cyhexatin could be used on imported foods.

Agency response. Recently, EPA completed its Tolerance Reassessment Eligibility Decision (TRED) for cyhexatin. In the *Federal Register* of July 13, 2005 (70 FR 40341) (FRL–7720–3), EPA published a decision notice for the cyhexatin TRED. The TRED and documents in support of the TRED are available in Edocket ID number OPP–2004–0295 at *http://www.epa.gov/edocket*, and at *http://www.epa.gov/pesticides/reregistration/status.htm*. Because there are no active U.S. registrations, human exposure to this pesticide is strictly through the consumption of treated imported foods. Residential and occupational exposures as well as dietary exposure through drinking water are not expected because there is no domestic use of cyhexatin.

Because there have been no active U.S. registrations for cyhexatin since 1989, the comment on its sale and use is not relevant to this rulemaking. However, cyhexatin tolerances were maintained for purposes of importation. The commenters did not address EPA's determination that acute dietary

exposure estimates for cyhexatin and orange juice only are below the Agency's level of concern for all population subgroups and that a time-limited import tolerance for orange juice should be established. The commenters did not refer to any scientific studies or specific data that should be considered by the Agency.

EPA determined that acute dietary risks from use of cyhexatin on commodities for which import tolerances exist exceed the Agency's level of concern. Therefore, manufacturers had indicated that they would support only the import tolerances for apple (fresh, juice, sauce, and dried) and citrus (orange juice). However, the estimated acute dietary risks from use of cyhexatin on these commodities exceed the Agency's level of concern. The assessment concluded that for apples and oranges, the acute dietary exposure estimate for children 1-2 years of age is at 223% of the acute population-adjusted dose (aPAD) at the 99.9th percentile; for all infants < 1–year of age at 187% of the aPAD, and for children 3-5 years of age at 151% of the aPAD. Apple juice and apple sauces were the risk drivers.

Because of this acute dietary concern, manufacturers have withdrawn support for cyhexatin tolerances, except for orange juice. EPA has evaluated the dietary risks from the importation of orange juice concentrate to be processed into orange juice and has determined that there is reasonable certainty that no harm to any population subgroup will result from exposure to cyhexatin treated oranges. The acute dietary exposure estimates for orange juice only are below the Agency's level of concern for all population subgroups. The most highly exposed sub-population was children 1-2 years of age, at 35% of the aPAD.

Therefore, EPA is revoking all existing tolerances for residues of the insecticide/acaricide cyhexatin under FFDCA section 408(e)(1) because existing tolerances do not meet requirements of FFDCA section 408(b)(2).

Specifically, EPA is revoking the tolerances in 40 CFR 180.144 for combined residues of cyhexatin and its organotin metabolites (calculated as cyhexatin) in or on the following food commodities: Almond; almond, hulls; apple; cattle, fat; cattle, kidney; cattle, liver; cattle, meat byproducts, except kidney and liver; cattle, meat; citrus, dried pulp; fruit, citrus; goat, fat; goat, kidney; goat, liver; goat, meat byproducts, except kidney and liver; goat, meat; hog, fat; hog, kidney; hog, liver; hog, meat byproducts, except kidney and liver; hog, meat; hop; hop, dried cone; horse, fat; horse, kidney; horse, liver; horse, meat byproducts, except kidney and liver; horse, meat; milk, fat (=N in whole milk); nectarine; nut, macadamia; peach; pear; plum, prune, dried; plum, prune, fresh; sheep, fat; sheep, kidney; sheep, liver; sheep, meat byproducts, except kidney and liver; sheep, meat; strawberry; and walnut.

However, concurrent with the revocation of the crop group tolerance on fruit, citrus in 40 CFR 180.144 at 2 parts per million (ppm), a tolerance on orange juice should be established at 0.1 ppm. Available processing data indicate that cyhexatin residues of concern in orange juice concentrate were less than the limit of quantitation; i.e., less than 0.1 ppm. Nevertheless, additional generic data is needed for EPA to confirm processing, analytical method, and toxicological data. Under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerance provide the necessary information. Therefore, EPA is establishing an individual time-limited tolerance in 40 CFR 180.144 for combined residues of cyhexatin and its organotin metabolites (calculated as cyhexatin) in orange, juice at 0.1 ppm with an expiration/revocation date of June 13, 2009; i.e., the time-limited tolerance will be established for a period of 4 years from the TRED completion date of June 13, 2005 in order to allow sufficient time for the Agency to issue a data call-in request, the manufacturers to submit the needed data, and for the Agency to review it. After reviewing the available data, EPA will decide whether there is sufficient data to support the orange juice tolerance as a permanent one. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue or allow the time-limited tolerance to expire.

Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA (21 U.S.C. 342(a)). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

A printed copy of the cyhexatin TRED may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or (703) 605–6000; internet at *http://www.ntis.gov/*. An electronic copy of the cyhexatin TRED is available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

B. What is the Agency's Authority for Taking this Action?

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore, no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

EPA is revoking specific cyhexatin tolerances and establishing a time-limited tolerance on orange juice effective on the date of publication of this final rule in the **Federal Register**.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration (FDA) that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance

or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA is required by August 2006 to reassess the tolerances in existence on August 2, 1996. As of September 6, 2005, EPA has reassessed over 7,430 tolerances. This document revokes a total of 41 tolerances which are counted as tolerance reassessments toward the August 2006 review deadline of FFDCA section 408(q), as amended by FQPA in 1996. For counting purposes, the Agency counts the citrus fruit group tolerance as one revocation (where a time-limited tolerance on orange juice is established in its place).

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support of June 1, 2000 (65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0160 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0160, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

In this final rule EPA revokes specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply,*

Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.144 is amended by revising the table under paragraph (a) to read as follows:

§ 180.144 Cyhexatin; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million	Expiration/ Revocation Date
Orange, juice	0.1	6/13/09

* * * * *

[FR Doc. 05–18581 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0221; FRL–7730–3]

Reynoutria Sachalinensis Extract; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the biochemical pesticide *Reynoutria sachalinensis* extract on all food commodities. The Interregional Research Project Number 4 (IR-4), on behalf of KHH Bioscience, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA),

requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Reynoutria sachalinensis* extract.

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0221. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9525; e-mail address: *benmhend.driss@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background and Statutory Findings

In the **Federal Register** of March 31, 2004 (69 FR 16925) (FRL–7342–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 3E6751) by Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, 681 U.S. Highway 1 South, North Brunswick, NJ 08902–3390, on behalf of KHH BioScience Inc., 920 Campus Drive, Suite 101, Raleigh, NC 27606. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Reynoutria sachalinensis* extract. This notice included a summary of the petition prepared by the petitioner IR-4, on behalf of KHH BioScience Inc. There were no comments received in response to the notice of filing.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Reynoutria sachalinensis is a naturally-occurring plant in the environment, commonly known as Giant knotweed. It is a rhizomatous, herbaceous, perennial, terrestrial plant belonging to the *Polygonaceae* family. The plant is a native of East Asia, but was introduced into Europe and North America in the 19th century as a fodder plant for cattle and as an ornamental. *Reynoutria sachalinensis* has a wide geographic distribution throughout the United States, Europe, and Asia. The plant is currently present in 25 U.S. States (Alaska, California, Connecticut, Idaho, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Montana, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, West Virginia and Wisconsin). It is found in diverse habitats including riparian areas, wet meadows, floodplain forests, forest edges, roadsides, railroad and utility rights-of way, and open areas. The plant has become invasive in

certain regions. According to the Invasive Plant Atlas of New England, this weed is present in all of the northeast U.S., with the exception of New Hampshire, as far south as North Carolina and Tennessee. It has also been reported in Louisiana, Montana, Idaho, Alaska, and three west coast States.

Reynoutria sachalinensis extract is an ethanolic extract of dried, ground *Reynoutria sachalinensis* plants, and is already approved as an active ingredient by EPA for use as a spray on non-food, ornamental plants grown in greenhouses. The active ingredient has been used in this manner for over 4 years with no reports of harmful health effects to greenhouse workers. In addition, there is a long history of human dermal and oral exposure to *Reynoutria sachalinensis* through its use as an ornamental plant, as a human medicinal agent, and as human food. Humans are regularly, physically exposed to the plant when handling it as an ornamental and there have been no known reports of any adverse health effects to humans via physical contact with the plant. In Asian folk medicine, the rhizomes, leaves, and stems of the plant have been used as a laxative, diuretic, and for the treatment of dermatitis and athlete's foot. *Reynoutria sachalinensis* has been consumed in the human diet in Japan for generations without any known negative effects. The plant is sold commercially in Japanese supermarkets for use in soups, as a deep-fried vegetable, and as a vinegared side dish. *Reynoutria sachalinensis* is also a floral nectar source for European honey bees, and thus many more humans are already indirectly exposed to the active ingredient via consumption of honey. The active ingredient has been registered and used in two end use products in Germany (Milsana fluessig and Milsana Pulver) as a resistance enhancer on fruit and vegetables since November 2000. To date, there have been no reports of adverse health effects resulting from the use of *Reynoutria sachalinensis* on food.

This final rule supports the use of *Reynoutria sachalinensis* extract as the active ingredient in an end-use product that will be used on food crops to enhance the resistance to fungal and bacterial diseases.

Acute toxicity studies were previously submitted and reviewed by EPA in support of the registrations of the manufacturing-use product, *Reynoutria sachalinensis* Bioprotectant, and the greenhouse, non-food-use end-use product, Milsana® Bioprotectant Concentrate. Submitted data for the technical grade active ingredient (TGAI) and the end-use product, indicate Toxicity Category IV for acute oral and acute inhalation toxicity. Acute dermal toxicity data indicated a Toxicity Category III. The data reported for primary eye irritation studies showed that the test substance was moderately irritating, and was given a Toxicity Category III when the TGAI was used, and Toxicity Category II when the end-use product Milsana® is used as a test material. Exposure to Milsana® produced very slight erythema in animal tests; as a result, a Toxicity Category IV was given for dermal irritation.

The Agency deemed the submitted acute toxicity studies acceptable and approved the bridging of these studies to support this tolerance exemption. A summary of these acute toxicity studies is presented in the table below.

ACUTE TOXICITY DATA FOR REYNOUTRIA SACHALINENSIS

Data Requirement	Results	Toxicity Category	MRID No.
Acute oral toxicity	TGAI: Lethal dose $(LD)_{50}$ > 5,000 milligrams/kilogram (mg/kg)	IV	448219–04
	EP: LD_{50} > 5,000 mg/kg	IV	448219–05
Acute dermal toxicity	TGAI: LD_{50} > 2,000 mg/kg	III	448219–06
	EP: LD_{50} > 5,000 mg/kg	III	448219–07
Acute inhalation toxicity	EP: Lethal concentration $(LC)_{50}$ > 2.6 mg/liter (L)	IV	448219–08
Primary eye irritation	TGAI: Slight irritant	III	448219–09
	EP: Moderate irritant	II	448219–10
Primary dermal irritation	EP: No dermal irritation symptoms up to 72–hour post-dosing	IV	448219–11
Skin sensitization	TGAI: Buehler test was negative	Not a sensitizer	448219–13
	EP: Buehler test was negative	Not a sensitizer	448219–14

Additionally, data waivers were requested by the applicant for the following Tier I toxicology data requirements:

1. Genotoxicity
2. Teratogenicity
3. Immune Response
4. 90–day Feeding
5. 90–day Dermal
6. 90–day Inhalation

The Agency granted these waivers based on the widespread and regular exposure that humans already have to *Reynoutria sachalinensis* in the environment, in food and medicine, and as an ornamental plant. As stated previously, large numbers of humans have been and continue to be regularly exposed to the active ingredient via physical contact and in their diet with no known reports of adverse effects. In addition, researchers, manufacturers, and others who work with this active ingredient have not reported any adverse health effects. Thus, the Agency does not expect the use of *Reynoutria sachalinensis* extract on food crops to result in any harmful effects to humans.

Reynoutria sachalinensis contains anthraquinones, which are widespread in plants, including plants used for human consumption. Most of the total anthraquinone content in plants consists of physcion, emodin, and chrysophanol. *Reynoutria sachalinensis* contains both emodin and physcion. While physcion and chrysophanol have shown no genotoxic effects, emodin has been shown to have genotoxic potential when extracted from edible plant substrates (e.g., beans, peas, cabbage, lettuce, plaintain, buckwheat). However,

whole plant extracts containing these anthraquinones have been shown not to be genotoxic, and to have properties that counteract genotoxic anthraquinones. Therefore, because the *Reynoutria sachalinensis* extract is derived from the whole plant extract, the Agency has concluded that *Reynoutria sachalinensis* extract does not present a genotoxicity risk.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. The Agency is not concerned about dietary exposure to *Reynoutria sachalinensis* because large numbers of humans have consumed it regularly without any reports of adverse effects. In Japan, *Reynoutria sachalinensis* is commonly used as a vegetable and is a known source of vitamins A, C, and E. Young shoots are edible and are harvested to be used in soups, as a deep-fried vegetable, a vinegared side dish, and sometimes mixed with tobacco or used as a substitute for it. *Reynoutria sachalinensis* is sold commercially in Japanese supermarkets for use as human food. *Reynoutria sachalinensis* is listed among floral nectar sources for European honey bees; therefore, humans are indirectly exposed to the active ingredient via consumption of honey.

In any event, negligible to no risk is expected for the general populations, including infants and children, because oral toxicity tests on *Reynoutria sachalinensis* indicated that the extract is non-toxic (Toxicity Category IV), thus, the risks are considered minimal.

With regard to the emodin content of *Reynoutria sachalinensis* extract, the Agency is not concerned about dietary exposure because *Reynoutria sachalinensis* extract is derived from the whole plant extract, which is not genotoxic.

2. *Drinking water exposure*. *Reynoutria sachalinensis* commonly grows along rivers and streams in much of the United States. The leaves of *Reynoutria sachalinensis* are killed off in frosts and leaf litter naturally drops into nearby bodies of water; therefore, those water bodies are already exposed to exudates of this plant. In those areas, the use of *Reynoutria sachalinensis* extract is unlikely to result in additional residues to drinking water that are above pre-existing levels. In other areas where the *Reynoutria sachalinensis* plant does not already exist, the Agency is not concerned about drinking water exposure because it is non-toxic and studies involving feeding of the active ingredient in acute oral rat trials indicated no adverse effect.

B. Other Non-Occupational Exposure

Reynoutria sachalinensis is a naturally-occurring plant currently found in 25 U.S. States as an ornamental plant, an invasive weed, and a grazing crop. Many humans are already regularly exposed to the plant in the environment. In certain areas of the world, i.e., Japan, Germany, and parts of Europe, the plant is consumed directly and indirectly as human food and is used as a pesticide on food. There have been no reported adverse effects to *Reynoutria sachalinensis.*

1. *Dermal exposure*. There is a long history of human dermal exposure to *Reynoutria sachalinensis* as it is a widespread, naturally-occurring plant in the environment. Humans have had direct contact with the plant through its use as an ornamental, and greenhouse workers have been exposed to *Reynoutria sachalinensis* extract when applying the EPA registered product Milsana® Bioprotectant to ornamentals. There have been no reported adverse effects to humans from the aforementioned forms of exposure. In addition, results of the acute dermal study indicated low toxicity (Toxicity Category III) and no significant dermal irritation (Toxicity Category IV). Based on these results, the anticipated risks from dermal exposure are considered minimal.

2. *Inhalation exposure*. As stated above, there have been no reported harmful effects to humans from exposure to *Reynoutria sachalinensis* in the environment, from its use as an ornamental, or from the application of *Reynoutria sachalinensis* extract to non-food crops in greenhouses. Furthermore, the inhalation toxicity studies showed no toxicity (Toxicity Category IV), thus the risks anticipated for this route of exposure are considered minimal.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish an exemption from a tolerance, the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues and other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children.

Common mechanisms of toxicity are not relevant to a consideration of cumulative exposure to *Reynoutria sachalinensis* extract because the extract is not toxic to mammalian systems. Thus, the Agency does not expect any cumulative or incremental effects from exposure to residues of *Reynoutria sachalinensis* extract when applied/used as directed on the label and in accordance with good agricultural practices.

VI. Determination of Safety for U.S. Population, Infants and Children

A. U.S. population

There is reasonable certainty that no harm will result from aggregate exposure to residues of *Reynoutria sachalinensis* extract to the U.S. population, infants, and children. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the fact that the plant is a part of the human diet in certain areas of the world with no reported adverse effects, and that humans have had frequent physical contact with *Reynoutria sachalinensis* and plants treated with *Reynoutria sachalinensis* extract with no negative health effects. In addition, the Toxicity Category IV for acute oral toxicity indicates that the extract is non-toxic. Finally, the Agency has concluded that there is a reasonable certainty of no harm when the *Reynoutria sachalinensis* extract is derived from the whole plant extract.

B. Infants and children

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (also referred to as a margin of safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of exposure will be safe for infants and children. Margins of exposure are often referred to as uncertainty or safety factors. In this instance, based on all available information, the Agency concludes that *Reynoutria sachalinensis* extract is non-toxic to mammals, including infants and children. Because there are no threshold effects of concern to infants, children and adults when *Reynoutria sachalinensis* extract is used as labeled, the provision requiring an additional margin of safety does not apply. As a result, EPA has not used a margin of exposure approach to assess

the safety of *Reynoutria sachalinensis* extract.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.''

Reynoutria sachalinensis extract is not a known endocrine disruptor nor is it related to any class of known endocrine disruptors. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this final rule for *Reynoutria sachalinensis* extract.

B. Analytical Method(s)

Through this action, the Agency proposes to establish an exemption from the requirement of a tolerance for the extract of *Reynoutria sachalinensis* when used on fruit and vegetable crops. For the very same reasons that support the granting of this tolerance exemption, the Agency has concluded that an analytical method is not required for enforcement purposes for these proposed uses of *Reynoutria sachalinensis* extract.

C. Codex Maximum Residue Level

There are no codex maximum residue levels established for *Reynoutria sachalinensis* extract.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0221 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES.** Mail your copies, identified by docket ID number OPP–2005–0221, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any

technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 9, 2005.

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1259 is added to subpart D to read as follows:

§ 180.1259 Reynoutria sachalinensis extract; exemption from the requirement of a tolerance.

Residues of the biochemical pesticide *Reynoutria sachalinensis* extract, when derived from the whole plant extract, are exempt from the requirement of a tolerance in or on all food commodities.

[FR Doc. 05–18725 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0074; FRL–7736–2]

Iprovalicarb; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of Iprovalicarb in or on tomatoes. Bayer CropScience AG requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0074. All documents in the docket are listed in the EDOCKET index at*http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Mary L. Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9354; e-mail address:*waller.mary@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 code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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**.

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In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of April 8, 2005 (70 FR 18001) (FRL–7703–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E6578) by Bayer CropScience AG, 2 T.W. Alexander Drive; Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.581 be amended by establishing a tolerance for residues of the fungicide iprovalicarb, [1-methylethyl [(1S)-2-methyl-1-[[[1-(4-methylphenyl) ethyl] amino] carbonyl] propyl] carbamate], in or on tomatoes at 1.0 parts per million (ppm). That notice included a summary of the petition prepared by Bayer CropScience AG, the registrant. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C. below.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see*http://www.epa.gov/pesticides/factsheets/riskassess.htm*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of iprovalicarb on tomatoes at 1.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by iprovalicarb as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies can be found at *http://www.epa.gov/edocket*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach which assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles that EPA uses in risk characterization at *http://www.epa.gov/oppfead1/trac/science/*.

A summary of the toxicological endpoints for iprovalicarb used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of August 22, 2002 (67 FR 54351) (FRL–7194–3).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* A tolerance has been established (40 CFR 180.581) for the residues of iprovalicarb, in or on grapes. Risk assessments were conducted by EPA to assess dietary exposures from iprovalicarb in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No such effects were identified in the toxicological studies for iprovalicarb; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), both of which incorporate food consumption data as

reported by respondents in the USDA 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Assessments were based on tolerance-level residues in/on grape commodities, anticipated residue (AR) values for tomato commodities, DEEM default processing factors, and 100% crop treated (100% CT) assumptions. The AR used for tomatoes was 0.5 ppm, or half the proposed tolerance level of 1.0 ppm for harmonization purposes.

iii. *Cancer*. The cancer dietary exposure analysis was based on the same assumptions as the chronic dietary exposure analysis.

iv. *Anticipated residue and percent crop treated (PCT)information*.

Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such data call-ins for information relating to anticipated residues as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

2. *Dietary exposure from drinking water*. There is no expectation that exposure to iprovalicarb residues would occur via drinking water. This action is for a tolerance on imported tomatoes only, and there are no registered uses of iprovalicarb in the United States.

3. *From non-dietary exposure*. The term''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Iprovalicarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Although iprovalicarb is a carbamate compound, it is not a member of the class of insecticides known as the N-methyl carbamates for which the Agency is presently conducting a cumulative risk assessment. The common mechanism determination for the N-methyl carbamates was based on shared structural characteristics and their shared ability to cause neurotoxicity through the inhibition of acetylcholinesterase (AChE) by carbamylation of the serine hydroxyl group located in the active site of the enzyme. Iprovalicarb does not fit these characteristics and therefore should not be included in the N-methyl carbamate common mechanism group nor should it be included in the N-methyl carbamate cumulative risk assessment. The Agency has concluded that other subgroups of carbamates do not share a common mechanism of toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at*http://www.epa.gov/pesticides/cumulative/.*

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no evidence for increased succeptability of fetuses to *in utero* exposure to iprovalicarb in either the rat developmental or rabbit developmental studies. There is qualitative evidence of susceptibility in the multi-generation reproduction study in the rat. However, it was concluded that there is a low degree of concern (and no residual uncertainty) for the effects seen because:

i. The increased susceptibility (decrease in pup survival) was seen only at the highest dose tested (2,074 milligram/kilogram/day (mg/kg/day)) which is twice the limit dose.

ii. The decrease in pup survival was seen only in 1–generation (F1, not replicated in F2).

iii. There are clearly defined NOAELs/LOAELs for parental and offspring toxicity.

iv. The effects seen in the offspring occurred at a much higher dose (192 mg/kg/day) than that used to establish the Chronic RfD (NOAEL of 2.62 mg/kg/day). Furthermore, the Agency concluded that a developmental neurotoxicity study is not required. No treatment-related toxicologically significant sign of neurotoxicity were observed in any available studies on iprovalicarb.

3. *Conclusion*. There is a complete toxicity data base for iprovalicarb and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Additionally the Agency concludes that there are reliable data that indicate there are no (residual) concerns for the prenatal and/or postnatal toxicity following exposure to iprovalicarb. Therefore, no additional safety factor (1X) is necessary to protect the safety of infants and children.

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. An endpoint attributable to a single dose was not identified for any population subgroups. Therefore, no acute risk is expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to iprovalicarb from food will utilize 8.4% of the cPAD for the U.S. population, [9.9 %] of the cPAD for all infants (< 1 year), and 37% of the cPAD for children (1-2 years). There are no residential uses for iprovalicarb that result in chronic residential exposure to iprovalicarb. In addition, there is no potential for chronic dietary exposure to iprovalicarb in drinking water. EPA does not expect the aggregate exposure (dietary only) to exceed 100% of the cPAD, as shown in Table of this unit:

TABLE 1.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO IPROVALICARB

Population/Subgroup	cPAD (mg/kg/day)	% cPAD (Food)
U.S. population	0.026	8.4
All Infants (< 1 yr)	0.026	9.9
Children 1-2 yrs	0.026	37

3. *Short-term risk*. Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Iprovalicarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. The lifetime cancer risk from iprovalicarb dietary exposure is determined for the U.S. population (total) only. The estimated exposure to iprovalicarb is 0.002189 mg/kg/day. Applying the Q1* of 4.47 x 10^{-4} (mg/kg/day)$^{-1}$ to the exposure value results in a cancer risk estimate of 9.74 x 10^{-7}. This risk is negligible, and does not exceed the Agency's level of concern.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to iprovalicarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HLPC/MS) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Iprovalicarb is not in the Codex system. There are no MRLs in Mexico. The Agency is recommending a 1.0 ppm tolerance on tomatoes in order to harmonize with the existing 1.0 mg/kg provisional maximum residue limit (MRL) for iprovalicarb on tomatoes in the European Union.

C. Response to Comments

Comments were received from a private citizen on April 17, 2005 objecting to the sale and use of this product. The comments further stated that no long term or combined tests have been done to show complete safety. The Agency response is as follows: The petitioner did not request registration of iprovalicarb in the U.S. The petitioner is seeking an import tolerance which would allow tomatoes treated in foreign countries to be imported into the U.S. The U.S. cannot regulate the sale and the use of a pesticide in a foreign country. The Agency had sufficient data, including chronic, long-term data, to support a determination that there is reasonable certainty that no harm will result from dietary exposure to residues of iprovalicarb.

V. Conclusion

Therefore, the tolerance is established for residues of iprovalicarb, [[1-methylethyl [(1S)-2-methyl-1-[[[1-(4-methylphenyl) ethyl] amino] carbonyl] propyl carbamate, in or on tomatoes at 1.0 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made.The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0074 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0074, to: Public Information

and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ≥''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 2005.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.581 is amended by alphabetically adding ''tomatoes'' in the table in paragraph (a) and by revising footnote 1 to read as follows:

§ 180.581 Iprovalicarb; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Tomatoes[1]	1.0

[1]There is no U.S. registration as of September 1, 2005.

* * * * *

[FR Doc. 05–18828 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0246; FRL–7734–3]

Lindane; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking specific existing tolerances for the insecticide lindane because, following receipt of registrant requests, the Agency canceled their associated Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) registrations in the United States.

DATES: This regulation is effective September 21, 2005. However, certain regulatory actions will not occur until the date specified in the regulatory text. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit IV. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number OPP–2004–0246. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address: *nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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 Access Electronic Copies of this Document and Other RelatedInformation?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/.*

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of April 15, 2005 (70 FR 20035) (FRL–7702–2), EPA proposed to revoke certain tolerances for residues of the insecticide lindane. Also, the proposal of April 15, 2005, provided a 60–day comment period which invited public comment for consideration and for support of tolerance retention under the Federal Food, Drug, and Cosmetic Act (FFDCA) standards.

The tolerances revoked in this final rule are no longer necessary to cover residues of the relevant pesticide in or on domestically treated commodities or commodities treated outside but imported into the United States. It is EPA's general practice to revoke those tolerances and tolerance exemptions for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance or tolerance exemption to cover residues in or on imported commodities or domestic commodities legally treated.

EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances for residues of pesticide chemicals for which there are no active registrations under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances on the grounds discussed in Unit II.A. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance is no longer needed.

3. The tolerance is not supported by data that demonstrate that the tolerance meets the requirements under FQPA.

Today's final rule does not revoke those tolerances for which EPA received comments stating a need for the tolerance to be retained. In response to the proposal published in the **Federal Register** of April 15, 2005 (70 FR 20035), EPA received comments during the 60–day public comment period, as follows:

Comments by private citizens. One private citizen stated that all lindane tolerances should be revoked. Another private citizen expressed a general

concern about the use of lindane as a pharmaceutical product.

Comment by the Washington Toxics Coalition (WTC). The WTC supports EPA's action to revoke remaining crop tolerances for lindane. The WTC stated that it had earlier submitted, along with the Pesticide Action Network North America (PANNA) and Alaska Community Action on Toxics (ACAT), a petition dated March 31, 2005, to EPA which requested the revocation of all tolerances for lindane. The WTC stated its opposition to the continued use of lindane as a pharmaceutical product and registration of lindane for seed treatment. The WTC expressed a concern for lindane pesticide risks to farmworkers, children, mothers, indigenous people, and animals.

Comment by Technology Sciences Group Incorporated (TSG). On behalf of its client, Crompton Corporation (currently known as Chemtura) who is a registrant of lindane seed treatment products, TSG agreed with revocation of lindane tolerances associated with canceled lindane uses and retention of livestock fat tolerances to accommodate lindane seed treatment uses. TSG disagreed with the petition by PANNA, *et. al.*, and stated that revocation of the livestock fat tolerances would be counterproductive because of the existing seed treatment uses.

Agency response. None of the commenters took issue with the Agency's proposal to revoke certain lindane tolerances which were no longer needed or whose associated food uses were no longer current or registered in the United States. To the extent that commenters raise issues relevant to the establishment of tolerances for the seed treatment uses, EPA will consider those comments during assessment of seed treatment tolerances, which will be completed by August 2006.

It is EPA's general practice to revoke tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person, in comments submitted on the proposal, indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

There are lindane end-use active registrations for seed treatments on cereal grains which are eligible for reregistration, provided that mitigation measures specified in the July 31, 2002, Lindane Registration Eligibility Decision (RED) are implemented and the Agency can establish tolerances for the seed treatment uses of lindane. These mitigation measures include the following actions: prohibition of dust formulations on certain crops, reduction of maximum application rates, addition of personal protective equipment requirements, and the establishment of a 24–hour restricted re-entry interval. The establishment of seed treatment tolerances is conditioned on EPA's ability to make a determination that establishing the new tolerances meets the safety standard in FFDCA. Currently, it is possible that livestock feed may be derived from grain grown from lindane-treated seed and residues of lindane in livestock would be expected. Consequently, the Agency believes that the existing livestock fat tolerances for lindane per se must be maintained until and unless the grain seed treatment uses are no longer registered. If the Agency is unable to make a safety finding that would support the establishment of tolerances on wheat, barley, oats, rye, corn, and sorghum for lindane residues resulting from seed treatment only, it will take steps to cancel the grain seed treatment registrations and propose revocation of the livestock fat tolerances. The Agency intends to complete its assessment of the seed treatment uses on or prior to August 3, 2006.

The proposal of April 15, 2005, did not address the pharmaceutical use of lindane. Lindane is an ectoparasiticide and ovicide. The U.S. Food and Drug Administration (FDA) has the primary responsibility for regulating human ectoparasite pharmaceutical treatments. Information regarding such use is available through the FDA's Center for Drug's Division of Drug Information at *http://www.fda.gov/cder/Offices/DDI/default.htm*.

Therefore, EPA is implementing tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of the reregistration and tolerance reassessment processes, EPA is required to determine whether each of the amended tolerances meets the safety standards under the Food Quality Protection Act (FQPA). The safety finding determination of ''reasonable certainty of no harm'' is found in detail in each RED and Report on FQPA Tolerance Reassessment Progress and Interim Risk Management Decision (TRED) for the active ingredient. REDs and TREDs propose certain tolerance actions to be implemented to reflect current use patterns, to meet safety findings and change commodity names and groupings in accordance with new EPA policy. Printed copies of the REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or (703) 605–6000; internet at *http://www.ntis.gov/*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm*.

Additional information can be found in the Lindane RED and the Residue Chemistry Chapter document which supports the RED. A copy of the Lindane RED and Residue Chemistry Chapter are found in the Administrative Record and hard copies are available in the public docket OPP–2002–0202, while an electronic copy is available through EPA's electronic public docket and comment system, EPA Dockets at *http://www.epa.gov/edocket/*. You may search for docket ID number OPP–2002–0202, then click on that docket ID number to view the Lindane RED support documents.

EPA is revoking certain specific existing tolerances for lindane because there are no longer any active registrations under FIFRA for uses on their associated commodities. Except for some seed treatment registrations, all other food use registrations for the insecticide lindane were canceled because EPA accepted the registrants' requests for voluntary cancellation.

EPA made amendments to delete mushroom and nectarine uses from lindane registrations effective on March 29, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until September 29, 2000. EPA believes that end users have had sufficient time, more than 4 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on mushroom and nectarine.

EPA made amendments to delete apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato uses from lindane registrations effective on July 26, 1999, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until January 26, 2001. EPA believes that end users have had sufficient time, more than 4 years, to exhaust those existing stocks

and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on apricot, asparagus, avocado, eggplant, grape, guava, mango, pear, pecans, pepper, pineapple, quince, strawberry, and tomato.

EPA made registration cancellations, which included plums among their affected commodity uses, effective on March 22, 2000, and registrant sale and distribution of existing stocks was permitted for 1–year after the cancellation requests were received by the Agency; i.e., until June 9, 2000. EPA believes that end users have had sufficient time, more than 5 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on plum and plum, prune, fresh.

EPA made registration cancellations, which included apples, cherries, and peaches among their affected commodity uses, effective on May 9, 2000, and registrant sale and distribution of existing stocks was permitted for 1–year after the cancellation requests were received by the Agency; i.e., until August 18, 2000. EPA believes that end users have had sufficient time, more than 5 years, to exhaust those existing stocks and for treated commodities to have cleared the channels of trade. Therefore, the Agency is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on apple, cherry, and peach.

EPA made amendments to delete spinach, celery, collards, kale, kohlrabi, lettuce, mustard greens, and Swiss chard uses from a lindane registration effective on December 10, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until June 10, 2004. EPA believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Because the proposed expiration/revocation dates of June 10, 2005, are now past, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on celery, collards, kale, kohlrabi, lettuce, mustard greens, spinach, and Swiss chard, all effective on the date of publication of this final rule in the **Federal Register**.

EPA made amendments to delete seed treatment uses for broccoli, Brussels sprouts, cabbage, and cauliflower from a lindane registration effective on February 25, 2005. However, registrant sale and distribution of existing stocks was permitted for a period of 18 months after the October 26, 2004, approval of the revision; i.e., until April 26, 2006. The Agency believes that end users will have sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade by April 26, 2007. Therefore, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on broccoli, Brussels sprouts, cabbage, and cauliflower with expiration/revocation dates of April 26, 2007.

EPA made amendments to delete cucumber, cantaloupe, watermelon, okra, onions, pumpkin, and squash uses from lindane registrations effective on August 17, 2002, and registrant sale and distribution of existing stocks was permitted for a period of 18 months; i.e., until February 17, 2004. EPA believes that end users have had sufficient time to exhaust existing stocks and for treated commodities to have cleared the channels of trade. Because the proposed expiration/revocation dates of June 10, 2005, are now past, EPA is revoking the tolerances in 40 CFR 180.133 for residues of the insecticide lindane in or on cucumber, melon, okra, onion (dry bulb), pumpkin, squash, and squash, summer, all effective on the date of publication of this final rule in the **Federal Register**.

Because some tolerances will remain codified in 40 CFR 180.133 with expiration/revocation dates, a revision of the residue definition for lindane is needed in order to harmonize with the International Union of Pure and Applied Chemistry (IUPAC) nomenclature. Therefore, EPA is amending the tolerance expression in 40 CFR 180.133 from residues of lindane (gamma isomer of benzene hexachloride) to lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane).

B. What is the Agency's Authority for Taking this Action?

EPA's general practice is to revoke tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

C. When Do These Actions Become Effective?

With the exception of certain lindane tolerances which EPA is revoking with specific expiration/revocation dates, the actions in this final rule become effective on the date of publication of this final rule in the **Federal Register** because the specific lindane tolerances revoked herein are no longer needed or are associated with food uses that have been canceled for several years. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade.

Any commodities listed in the regulatory text of this document that are treated with the pesticides subject to this final rule, and that are in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates that the pesticide was applied to such food.

III. Are There Any International Trade Issues Raised by this Final Action?

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. When possible, EPA seeks to harmonize U.S. tolerances with Codex MRLs. EPA may

establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain in a **Federal Register** document the reasons for departing from the Codex level. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual REDs. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws and Regulations,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

IV. Objections and Hearing Requests

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0246 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IV.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0246, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

V. Statutory and Executive Order Reviews

In this final rule EPA is revoking specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action (i.e., a tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks*(62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–13, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis

was published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Specifically, as per the 1997 notice, EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with canceled pesticides. Furthermore, for the pesticides named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present revocations that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 2005

James Jones,

Director, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In section 180.133, paragraph (a) is revised to read as follows:

§ 180.133 Lindane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of 1,2,3,4,5,6-hexachlorocyclohexane) in or on raw agricultural commodities as follows:

Commodity	Parts per million	Expiration/ Revocation Date
Broccoli	1.0	4/26/07
Brussels sprouts	1.0	4/26/07
Cabbage	1.0	4/26/07
Cattle, fat	7.0	None
Cauliflower	1.0	4/26/07
Goat, fat	7.0	None
Hog, fat	4.0	None
Horse, fat	7.0	None
Sheep, fat	7.0	None

* * * * *

[FR Doc. 05–18829 Filed 9–20–05; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0259; FRL–7737–9]

Boscalid; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on tangerines. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on mandarin oranges and mandarin hybrids. ''Tangerines'' is the accepted regulatory term used for these crops and a tolerance on tangerines covers both mandarin oranges and mandarin hybrids. This regulation establishes a maximum permissible level for residues of boscalid in this food commodity. The tolerance will expire and is revoked on December 31, 2008.

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number OPP–2005–0259. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other

material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec–18–Mailbox@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on tangerines at 2.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 2008. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Boscalid on Mandarin Oranges and Mandarin Hybrids and FFDCA Tolerances

The state of California requested the use of boscalid (pre-mixed with the chemical pyraclostrobin as the product Pristine) on mandarin oranges and mandarine hybrids (termed ''tangerines'' for regulatory purposes) to control *Alternaria alternata*. The applicant reported that only two fungicides are registered for use to control this pathogen and that neither provide commercially acceptable disease control. It was also stated that crop yields have been declining since 1999 because of *Alternaria alternata*. EPA has authorized under FIFRA section 18 the use of boscalid (pre-mixed with pyraclostrobin as the product Pristine) on mandarins and mandarin hybrids for control of *Alternaria alternata* in California. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of boscalid in or on tangerines. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2008, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on tangerines after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether boscalid meets EPA's registration requirements for use on tangerines or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of boscalid by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than California to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for boscalid, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of boscalid and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on tangerines at 2.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for boscalid used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary	No appropriate endpoint identified	N/A	N/A
Chronic Dietary (All populations)	NOAEL= 21.8 UF = 100 Chronic RfD = 0.218 mg/kg/day ..	FQPA SF = 1 cPAD = chronic RfD/FQPA SF = 0.218 mg/kg/day.	Chronic rat, carcinogenicity rat and 1–year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Incidental Oral (Short and intermediate term residential only)	NOAEL= 21.8 mg/kg/day	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1–year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Dermal (All Durations)	Oral study NOAEL=21.8 mg/kg/day (dermal absorption rate = 15%)	Residential LOC for MOE = 100≤	Chronic rat, carcinogenicity rat and 1–year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR BOSCALID FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Inhalation (All Durations)	Oral study NOAEL= 21.8 mg/kg/day (inhalation absorption rate = 100%)	Residential LOC for MOE = 100	Chronic rat, carcinogenicity rat and 1–year dog studies LOAEL = 57–58 mg/kg/day based on liver and thyroid effects
Cancer (oral, dermal, inhalation)	Classification: ''Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.''		

* The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established for residues of boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on a wide variety of crops and animal commodities. Tolerances on primary crops range from 0.05 ppm on the Tuberous and Corm Vegetable Crop Subgroup (1C) to 30 ppm on peppermint and spearmint tops. Tolerances on rotational crops range from 0.05 ppm on several commodities to 8.0 ppm on grasses. Animal commodity tolerances range from 0.02 ppm for eggs to 0.35 ppm for the meat byproducts of cattle, goats, horses, and sheep. Boscalid is a member of the carboxamide (anilide) class of compounds. In target crops and rotational crops, parent boscalid is the only residue of concern for both tolerance expression and risk assessment. In animal commodities, parent boscalid, a hydroxy metabolite, and the glucuronide of the hydroxy metabolite are the residues of concern for tolerance expression and risk assessment. In drinking water, parent boscalid is the only residue of concern for risk assessment. Risk assessments were conducted by EPA to assess dietary exposures from boscalid in food as follows:

i. *Acute exposure*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population or to the subpopulation females 13–50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD) for the general population or females 13–50 years old. An acute aggregate risk assessment is not needed.

ii. *Chronic exposure*. In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA–1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The chronic dietary exposure analysis was based on tolerance level residues and 100% crop treated assumptions. DEEM (Version 7.81) default processing factors were used for some commodities.

iii. *Cancer*. The Agency classified boscalid as having ''suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.'' The quantification of human cancer risk was therefore not conducted.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for boscalid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of boscalid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The screening concentration in groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of reference dose (%RfD) or percent of population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to boscalid they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of boscalid for chronic exposures are estimated to be 26 parts per billion (ppb) for surface water and 0.6 ppb for groundwater.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Boscalid is currently registered for use on golf courses. The boscalid label specifies that this product is intended for golf course use only, and not for use on residential turfgrass or turfgrass being grown for sale or other commercial use such as sod production. Although the label does not indicate that the product is applied by licensed or commercial applicators, it is acknowledged that the homeowner will not be applying the product to golf courses. Therefore, a risk assessment for residential handler exposure is not required. Boscalid is not packaged or marketed for home orchard use and, therefore, that use is not assessed.

It has been determined that the potential exists for exposure to boscalid from entering areas previously treated with the fungicide. Based on the above discussion, there is only one potential non-occupational post-application scenario associated with boscalid for which risk needs to be assessed: adults and youths golfing. Duration of exposure is anticipated to be short-term.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to boscalid and any other substances and boscalid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that boscalid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity*. A complete discussion of the prenatal/postnatal sensitivity study was discussed in a final rule dated July 30, 2003 (68 FR 44640) (FRL–7319–6). No new information has been received to change this information.

At that time, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity as the degree of concern is low for the susceptibility seen in the available studies, and the dose and endpoints selected for the overall risk assessments will address the concerns for the body weight effects seen in the offspring. Although the dose selected for overall risk assessments (21.8 mg/kg/day) is higher than the NOAELs in the 2-generation reproduction study (10.1 mg/kg/day) and the developmental neurotoxicity study (14 mg/kg/day), these differences are considered to be an artifact of the dose selection process in these studies. For example, there is a tenfold difference between the LOAEL (106.8 mg/kg/day) and the NOAEL (10.1 mg/kg/day) in the 2-generation reproduction study. A similar pattern was seen with regard to the developmental neurotoxicity study, where there is also a tenfold difference between the LOAEL (147 mg/kg/day) and the NOAEL (14 mg/kg/day). There is only a 2- to 3-fold difference between the LOAEL (57 mg/kg/day) and the NOAEL (21.8 mg/kg/day) in the critical study used for risk assessment. Because the gap between the NOAEL and LOAEL in the 2-generation reproduction and developmental neurotoxicity studies was large and the effects at the LOAELs were minimal, the true NOAEL was probably considerably higher. Therefore, the selection of the NOAEL of 21.8 mg/kg/day from the 1–year dog study is conservative and appropriate for the overall risk assessments. In addition, the endpoints for risk assessment are based on thyroid effects seen in multiple species (mice, rats and dogs) and after various exposure durations (subchronic and chronic exposures) which were not observed at the LOAELs in either the 2-generation reproduction or the developmental neurotoxicity studies. Based on these data, the Agency concluded that there are no residual uncertainties for pre- and post-natal toxicity.

3. *Conclusion*. There is a complete toxicity database for boscalid and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. There is no evidence of susceptibility following *in utero* exposure to rats and there is low concern and no residual uncertainties in the developmental toxicity study in rabbits, in the 2-generation reproduction study or in the developmental neurotoxicity study after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment. Based on these data and conclusions, EPA reduced the FQPA safety factor to 1X.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, the Office of Pesticide Programs (OPP) concludes with reasonable certainty that exposures to

boscalid in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of boscalid on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk*. As there were no toxic effects attributable to a single dose of boscalid, an endpoint of concern was not identified to quantitate acute dietary risk. As a result, an acute aggregate risk assessment is not needed.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to boscalid from food will utilize 7% of the cPAD for the U.S. population, 16% of the cPAD for all infants (<1 year old) and 26% of the cPAD for children 1 to 2 years old. There are no residential uses for boscalid that result in chronic residential exposure to boscalid. In addition, despite the potential for chronic dietary exposure to boscalid in drinking water, after calculating DWLOCs and comparing them to conservative model of boscalid in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BOSCALID

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EDWC (ppb)	Ground Water EDWC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.218	7	26	0.63	7,100
All Infants (<1 year old)	0.218	16	26	0.63	1,800
Children 1–2 years	0.218	26	26	0.63	1,600
Females 13–49	0.218	5	26	0.63	6,200

3. *Short-term risk*. The short-term aggregate risk assessment takes into account average exposure estimates from dietary consumption of boscalid (food and drinking water) and non-occupational uses (golf courses). Postapplication exposures from the proposed use on golf courses is considered short-term, and applies to adults and youths. Therefore, a short-term aggregate risk assessment was conducted. Since all endpoints are from the same study, exposures from different routes can be aggregated. Table 3 summarizes the results. The MOE from food and non-occupational uses is 1,400, and the calculated short-term DWLOC is 6,100 ppb. Compared to the surface and groundwater EDWCs, the DWLOCs are considerably greater. Therefore, short-term aggregate risk does not exceed EPA's level of concern. The MOE and DWLOC are considered to be representative for youth because youth and adults possess similar body surface area to weight ratios, and because the dietary exposure for youth (13–19 years old) is less than that of the general U.S. population.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BOSCALID

Population	Short-Term Scenario									
	NOAEL mg/kg/day	Target MOE	Max Exposure mg/kg/day	Average Food Exposure mg/kg/day	Residential Exposure mg/kg/day	Aggregate MOE (food and residential)	Max Water Exposure mg/kg/day	Ground Water EDWC (ppb)	Surface Water EDWC (ppb)	Short-Term DWLOC (ppb)
U.S	21.8	100	0.218	0.014631	0.0008	1,400	0.2026	0.6	26	6,100

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). As no intermediate-term non-occupational exposures to boscalid are anticipated, an intermediate-term aggregate risk assessment is not needed.

5. *Aggregate cancer risk for U.S. population*. EPA's review of toxicity data has resulted in a classification of boscalid as having ''suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential.'' Thus, a quantification of human cancer risk has not been performed.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to boscalid residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address:*residuemethods@epa.gov*.

B. International Residue Limits

There is neither a Codex proposal, nor a Canadian or Mexican maximum residue limit for residues of boscalid on tangerines. Therefore harmonization is not an issue.

VI. Conclusion

Therefore, the tolerance is established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on tangerines at 2.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0259 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2.*Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number OPP–2005–0259, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national

government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 13, 2005

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.589 is amended by adding text to paragraph (b) after the paragraph heading to read as follows:

§ 180.589 Boscalid; tolerances for residues.

* * * * *

(b) * * * Time-limited tolerances are established for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1 ′-biphenyl]-2-yl) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/ Revocation Date
Tangerine	2.0	12/31/08

* * * * *

[FR Doc. 05–18830 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2005–0069; FRL–7737–3]

Inert Ingredients; Revocation of 34 Pesticide Tolerance Exemptions for 31 Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because these substances are no longer contained in active Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) pesticide product registrations. These ingredients are subject to reassessment by August 2006 under section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The 34 tolerance exemptions are considered ''reassessed'' for purposes of FFDCA's section 408(q).

DATES: This regulation is effective September 21, 2005. Objections and requests for hearings must be received on or before November 21, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit XI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under docket identification (ID) number OPP–2005–0069. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0404; e-mail address: *angulo.karen@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System

(NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. 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 Electronic Documents and Other Related Information?

In addition to using EDOCKET at (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. What Action is the Agency Taking?

In the **Federal Register** of June 1, 2005 (70 FR 31401) (FRL–7712–7), EPA issued a proposed rule to revoke 34 exemptions from the requirement of a tolerance that are associated with 31 inert ingredients because those substances are no longer contained in pesticide products registered in the United States. The proposed rule provided a 60–day comment period that invited public comment for consideration and for support of tolerance exemption retention under the FFDCA standards. An additional 30–day comment period was provided based on a request from certain industry representatives (70 FR 45625, August 8, 2005, (FRL–7729–4)).

In this final rule, EPA is revoking these same 34 tolerance exemptions. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Thus, it is EPA's policy to issue a final rule revoking those tolerances and tolerance exemptions for residues of pesticide chemicals for which there are no active registrations or uses under FIFRA, unless any person commenting on the proposal demonstrates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

Generally, EPA will proceed with the revocation of these tolerances and tolerance exemptions on the grounds discussed in Unit II. if one of the following conditions applies:

1. Prior to EPA's issuance of a section 408(f) order requesting additional data or issuance of a section 408(d) or (e) order revoking the tolerances or tolerance exemptions on other grounds, commenters retract the comment identifying a need for the tolerance to be retained.

2. EPA independently verifies that the tolerance or tolerance exemption is no longer needed.

3. The tolerance or tolerance exemption is not supported by data that demonstrate that the tolerance or tolerance exemption meets the requirements under FQPA.

The Agency received several comments in response to the proposed revocation notice. The Fluoride Action Network Pesticide Project (FAN) supported EPA's proposal to revoke the exemption from the requirement of a tolerance for sodium fluoride.

Two commenters requested clarification on EPA's policy concerning tolerance exemptions for inert ingredients that are reactive intermediates or reagents. The Agency confirms that the three reactive inert ingredients being revoked in this final rule (i.e., ethyl methacrylate, methyl methacrylate, and phosphorus oxychloride) do not require an exemption from the requirement of a tolerance because they are consumed during the manufacture of the final product. EPA intends to provide additional clarification and guidance in the future for reactive/reagent chemicals used in the manufacture of pesticide products.

In addition, two commenters suggested several areas where additional guidance and policy clarifications would be helpful, including inert ingredients in non-food use pesticide products, impurities in technical grade active ingredients and inert ingredients, and consistency in the nomenclature for inerts. Although not directly relevant to the proposal to revoke the 34 tolerance exemptions, the Agency appreciates these suggestions and agrees that clear guidance would be helpful. The Agency intends to provide guidance for topics such as these in the future.

Therefore, for the reasons stated herein and in the proposed rule, EPA is revoking the 34 exemptions from the requirement of a tolerance that were identified in the **Federal Register** of June 1, 2005 (70 FR 31401).

III. What is the Agency's Authority for Taking this Action?

This final rule is issued pursuant to section 408(d) of FFDCA (21 U.S.C. 346a(d)). Section 408 of FFDCA authorizes the establishment of tolerances, exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or tolerance exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA. If food containing pesticide residues is found to be adulterated, the food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342 (a)).

EPA's general practice is to revoke tolerances and tolerance exemptions for residues of pesticide chemicals on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. EPA has historically been concerned that retention of tolerances and tolerance exemptions that are not necessary to cover residues in or on legally treated foods may encourage misuse of pesticides within the United States. Nonetheless, EPA will establish and maintain tolerances and tolerance exemptions even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances and tolerance exemptions for unregistered pesticide chemicals in order to prevent potential misuse.

IV. When Do These Actions Become Effective?

These actions become effective on September 21, 2005. Any commodities listed in the regulatory text of this document that are treated with the pesticide chemicals subject to this final rule, and that are in the channels of trade following the tolerance exemption revocations, shall be subject to FFDCA section 408(1)(5), as established by the FQPA. Under this section, any residues of these pesticide chemicals in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that: (1) The residue is present as the result of an application or use of the pesticide chemical at a time and in a manner that was lawful under FIFRA, and (2) the residue does not exceed the level that was authorized at the time of the application or use to be present on the food under an exemption from tolerance. Evidence to show that food was lawfully treated may include

records that verify the dates that the pesticide chemical was applied to such food.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old FFDCA sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2005–0069 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 21, 2005.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2005–0069, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. The Agency hereby certifies that this rule will not have significant negative economic impact on a substantial number of small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 14, 2005.

Meredith F. Laws,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.1045 and § 180.1066 [Removed]

■ 2. Sections 180.1045 and 180.1066 are removed.

§ 180.910 [Amended]

■ 3. Section 180.910 is amended by removing from the table the entries for Ethylene methylphenylglycidate; Phosphorus oxychloride; Sulfurous acid; and 1,1,1-Trichloroethane.

§ 180.920 [Amended]

■ 4. Section 180.920 is amended by removing from the table the entries for:

a. Acetonitrile;

b. Almond, bitter;

c. Aluminum 2-ethylhexanoate;

d. 1,3-Butylene glycol dimethyacrylate;

e. Calcium and sodium salts of certain sulfonated petroleum fractions (mahogany soaps); calcium salt molecular weight (in amu) 790–1,020, sodium salt molecular weight (in amu) 400–500;

f. Copper salts of neodecanoic acid and 2-ethylhexanoic acid;

g. Diallyl phthalate;

h. Dipropylene glycol dibenzoate;

i. Ethyl methacrylate;

j. Furfural byproduct (a granular steam-acid sterilized, lignocellulosic residuum in the extraction of furfural from corn cobs, sugarcane bagasse, cottonseed hulls, oat hulls, and rice hulls);

k. Isopropylbenzene;

l. Methyl isoamyl ketone;

m. Methyl methacrylate;

n. X-(p-Nonylphenyl)-v-hydroxy-poly(oxyethylene) sulfosuccinate isopropylamine and *N*-hydroxyethyl isopropylamine salts of: The poly(oxyethylene) content averages r moles;

o. Propylene dichloride;

p. Sodium fluoride;

q. Tetrasodium *N*-(1,2-dicarboxyethyl)-*N*-octadecyl-sulfosuccinamate;

r. (2,2′(2,5-Thiophenediyl)bis(5-tert-butylbenzoxazole)) (CAS Reg. No. 7128–64–5); and

s. Tri-tert-butylphenol polyglycol ether (molecular weight (in amu) 746).

§ 180.930 [Amended]

■ 5. Section 180.930 is amended by removing from the table the entries for:

a. Acetylated lanolin alcohol;

b. Calcium and sodium salts of certain sulfonated petroleum fractions (mahogany soaps); calcium salt molecular weight (in amu) 790–1020, sodium salt molecular weight (in amu) 400–500;

c. Cumene (isopropylbenzene);

d. Dibutyltin dilaurate (CAS Reg. No. 77–58–7);

e. 4,4′-Isopropylidenediphenol alkyl (C_{12}-C_{15}) phosphites (CAS Reg. No. 92908–32–2);

f. Polyethylene esters of fatty acids, conforming to 21 CFR 172.854;

g. 1,1,1-Trichloroethane;

h. Triethylene glycol diacetate (CAS Reg. No. 111–21–7); and

i. Tri-tert-butylphenol polyglycol ether (molecular weight (in amu) 746).

[FR Doc. 05–18831 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7971–3]

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

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of partial deletion of the East Tailing Area of the Tar Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 5 is publishing a notice of partial deletion of the East Tailing Area of the Tar Lake Superfund Site (Site), located in, Antrim County Michigan, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, in appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This notice of partial deletion is being published by EPA with the concurrence of the State of Michigan, through the Michigan Department of Environmental Quality (MDEQ). Remedial investigation results in the East Tailing Area of the Tar Lake Site

have shown that no threat to public health or the environment exist and, therefore, the taking of remedial measures under CERCLA is not necessary at this time.

DATES: This notice of partial deletion will be effective November 21, 2005, unless EPA receives adverse comments by October 21, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the notice of partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Comments may be mailed to: Stuart Hill, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson Blvd., Chicago, IL 60604. Electronic comments may be sent to *bloom.thomas@epa.gov.*

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site information repositories located at: EPA Region 5 Record Center, 77 W. Jackson, Chicago, Il 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4:00 p.m.; Mancelona Public Library, 202 W. State Street, Mancelona, MI 49945, (231) 587–9451. Monday through Friday 8 a.m. to 4 p.m., Tuesday and Thursday 6 p.m to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Thomas Bloom, Remedial Project Manager at (312) 886–1967, *bloom.thomas@epa.gov* or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253, *Beard.Gladys@EPA.Gov* or 1–800–621–8431, (SR–6J), U.S. EPA Region 5, 77 W. Jackson, Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Partial Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Partial Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 5 is publishing this notice of partial deletion of the East Tailing Area of the Tar Lake, Superfund Site from the NPL. The East Tailing Area of the Tar Lake Site, as described in the Remedial Investigation Report for Operable Unit 2, August 7, 2000, consists of approximately 40 acres of land east of Peckham Lake.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in section 300.425(e)(3) of the NCP, sites partially deleted from the NPL remain eligible for remedial actions if conditions at the partially deleted site warrant such action.

This action will be effective November 21, 2005 unless EPA receives adverse comments by October 21, 2005, on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this partial deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for partial deletion of sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the East Tailing Area of the Tar Lake Superfund Site and demonstrates how it meets the partial deletion criteria. Section V discusses EPA's action to partially delete the East Tailing Area from the NPL unless adverse comments are received during the public comment period.

II. NPL Partial Deletion Criteria

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

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

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

Even if a portion of a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the portion of the deleted site above levels that allow for unlimited use and unrestricted exposure, CERCLA section 121(c), 42 U.S.C. 9621(c), requires that a subsequent review of the deleted portion of the site be conducted at least every five years after the initiation of the remedial action at the site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from the portion deleted from the NPL, the deleted portion of the site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to partial deletion of this Site:

(1) The EPA consulted with the State of Michigan on the partial deletion of the East Tailing Area of the Site from the NPL prior to developing this notice of partial deletion.

(2) Michigan concurred with partial deletion of the East Tailing Area of the Site from the NPL.

(3) Concurrently with the publication of this notice of partial deletion, a notice of intent to partially delete is published today in the ''Proposed Rules'' section of the **Federal Register**, is being published in a major local newspaper of general circulation at or near the Site, and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to partially delete the East Tailing Area of the Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion of the East Tailing Area in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely notice of withdrawal of this notice of partial deletion before its effective date and will prepare a response to comments and continue with a decision on the partial deletion based on the notice of intent to partially delete and the comments already received.

Partial deletion of the East Tailing Area of the Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Partial deletion of the East Tailing Area of the Site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the partial deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Partial Deletion

The following information provides EPA's rationale for deleting the East Tailing Area of this Site from the NPL:

Site Location

The Tar Lake Superfund site (the Site) is located in Mancelona Township, Antrim County, Michigan. It is a former iron manufacturing facility that operated between 1882 and 1945. Response actions at the Tar Lake Superfund site have been separated into two operable units. The first operable unit (OU1), addressed tar contamination in a 4-acre depression of the 200-acre site by removing and transporting approximately 47,000 tons of tar to an energy recovery facility. The second operable unit (OU2), addressed remaining contamination throughout the 200-acre site.

Site History

Beginning in 1882 and continuing through 1945, the Tar Lake site was the location of an iron production facility. The Antrim Iron Works Company used the charcoal method to produce iron. In 1910, the Antrim Iron Works Company began producing charcoal in sealed retorts from which pyroligneous (made by destructive distillation of wood) liquor was recovered. A secondary chemical manufacturing process was applied to the recovered pyroligneous liquor at the iron works. The pyroligneous liquor was further processed into calcium acetate, methanol, acetone, creosote oil, and a tarry-like waste residue—referred to throughout this document as tar. The tar was discharged into a 4-acre on-site depression. The secondary chemical process generated tar waste until 1944. Tar and water that remained in this depression are referred to as Tar Lake. As early as 1949, the groundwater coming from the Tar Lake was discovered to be contaminated with phenolic compounds. Tar Lake caught fire in 1969 and burned for several months before being extinguished by natural action.

Mount Clemens Metal Products Company owned and periodically used the Tar Lake area of the Site for waste disposal from 1957 until 1967. Gulf and Western Manufacturing Company, successor to Mount Clemens Metal Products Company, owned the property from 1967 to approximately 1982. In December 1982, Gulf and Western Manufacturing Company dissolved due to a merger with Gulf and Western, Inc. In 1985, Gulf and Western Inc., sold the property to Fifty-Sixth Century Antrim Iron Works Company (56th Century). In April 1989, Gulf and Western Inc., merged with Paramount Communications, Inc. Officials of 56th Century, at the Tar Lake site are employees of Paramount Communications Realty Corporation, a wholly-owned subsidiary of Paramount Communications, Inc. In 1994, Viacom International, Inc., acquired Paramount Communications, Inc., and 56th Century is currently a subsidiary of French Street Management, Inc., a subsidiary of Viacom International, Inc. In November 1999, the Community Resource Development (CRD) Inc., a non-profit community development organization, purchased approximately 88 acres of the 200 acre Tar Lake site. Current property owners include CRD Inc., Collins Aikman Products, Mancelona Township, and Mr. John Apfel.

The Tar Lake site was placed on the National Priorities List (NPL) in September 1983. On April 21, 1986, the U.S. EPA and 56th Century, a subsidiary of Viacom International, Inc., signed an Administrative Order on Consent (AOC 1986) which required that 56th Century conduct a two-phase Remedial Investigation (RI). Phase I was to develop a Preliminary Endangerment Assessment (PEA). Phase II was to be a more detailed investigation based on the results of the PEA. 56th Century installed a fence around the 4-acre Tar Lake and included an additional 14 acres of the Retort and Chemical Production Area where on-site structures and waste piles existed.

The PEA was submitted in October 1988, and it concluded that the contaminants in the groundwater did not pose a threat. EPA found the PEA to be deficient because it relied upon data which were inadequately and incompletely collected, and its conclusions were not adequately supported. EPA did not approve the PEA. In 1989, 56th Century performed additional investigative-type work required by EPA. This additional work found that there was a connection between the tar and groundwater. Groundwater beneath Tar Lake was found to contain over 50 compounds that were also found in the tar. It also was discovered that benzene and styrene were present in on-site groundwater at levels above the Safe Drinking Water Act—Maximum Contaminant Levels (MCLs). EPA determined that a source control and groundwater containment Operable Unit (OU1) was appropriate for the Site.

The 1986 AOC was amended in August 1990 to have 56th Century conduct a Phased Feasibility Study Report, to address OU1. 56th Century submitted an unacceptable Phased Feasibility Study Report which utilized a risk assessment based on the unapproved PEA. EPA took over the preparation of the Phased Feasibility Study report. EPA completed the report in March 1992. A Record of Decision (ROD for OU1) was issued in September 1992, selecting consolidation of the tar and contaminated soil in on-site Resource Conservation and Recovery Act (RCRA) containment cells and interim groundwater treatment. A second Operable Unit (OU2) was planned to address final groundwater clean up.

Pre-design studies were conducted at the Tar Lake site from October 1993 to June 1994. The pre-design studies yielded data about tar management alternatives and media treatability which resulted in a reassessment of the selected remedial alternative presented in the 1992 ROD for OU1. An Explanation of Significant Differences (ESD for OU1) was issued in July 1998, which documents modification to the tar component of the 1992 ROD for OU1. The ESD for OU1 explained that instead of storing the excavated tar on site in RCRA containment cells, tar would be transported off site to an end-user or an energy recovery facility.

In July 1998, EPA began a response action which included the excavation and transportation of tar from the 4-acre Tar Lake. In July 1999, EPA completed the removal of 47,043 tons of tar and tar debris, backfilled the 4-acre tar lake depression with 1-foot of clean soil, and installed a temporary poly-liner in the lower areas of the 4-acre tar lake depression. MDEQ took on the responsibility of the management of storm water collected in the liner. The tar from Tar Lake was transported to two energy recovery facilities. In conjunction with EPA's response action, MDEQ installed and began to operate, on an intermittent basis, an in-situ biosparge system for on-site groundwater treatment. Currently, the in-situ biosparge system is operated approximately 8 hours per day, seven days per week. From November 1999 to June 2002, MDEQ provided bottled water to residents with site-related iron and manganese concentrations in their off-site groundwater wells above State Secondary Drinking Water Standards. Currently, a State funded municipal water system has been extended to the affected residents.

Remedial Investigation and Feasibility Study (OU2)

In June 1999, EPA conducted RI fieldwork to address OU2. The RI for OU2 investigated residual contamination remaining beneath the 4-

acre Tar Lake and surface areas potentially impacted by the Antrim Iron Works Company's iron manufacturing processes. Historical information was researched and the knowledge gained was used to identify several production areas and the operational history of the iron manufacturing processes that may have produced potential areas of concern.

Within the 200-acre Tar Lake site, (the Iron Production Area, Creosote Area, Nelson Lake, Peckham Lake, East Tailing Area, Tar Lake Area, and Retort and Chemical Production Area), surface and subsurface soil, sediment, surface water and on-site groundwater samples were collected and analyzed for general chemistry, metals, phenolic compounds, volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs).

Off-site areas of concern investigated were a drainage ditch adjacent to the site, off-site groundwater and a seepage area where off-site groundwater discharges to Saloon Creek. Samples collected from off-site areas were analyzed for general chemistry, metals, phenolic compounds, volatile organic compounds (VOCs) and semi-volatile organic compounds (SVOCs). Results of the RI for OU2 indicated that approximately 45,000 tons of residual tar remained in the ''rind'' beneath the 4-acre depression and was the source of on-site groundwater contamination.

During the RI, it was determined that benzene in on-site groundwater presented an unacceptable risk because it was above maximum contaminant levels, and levels of 2,4-dimethylphenol exceeded the State drinking water standards. In addition, tar/creosote waste was discovered on the surface in the Creosote Area which also presented an unacceptable risk.

Record of Decision for OU2 Findings

In February 2002, the ROD for OU2 was issued to address these unacceptable risks. Components of this selected remedy were:

a. Removal of on-site foundations and miscellaneous debris impeding remedation;

b. Removal of the poly-liner to enhance infiltration of precipitation to flush contaminants to groundwater;

c. Bioventing of approximately 45,000 tons of rind material;

d. Installation of a groundwater circulation system for approximately 45,000 tons of rind material;

e. Continued operation of the on-site groundwater biosparge system to treat contaminants in the on-site groundwater (costs $48,000 per year);

f. Institutional controls including recording legal notices on property deeds to restrict on-site groundwater use;

g. Long-term monitoring to assess groundwater conditions over time ($2,000 per event): and

h. Excavation of approximately 15,000 tons of tar/creosote waste from the Creosote Area and transportation to an energy recovery facility.

On page 2 of the Declaration section, and on page 27 of the Decision Summary section in the 2002 ROD for OU2, it was explained that EPA would evaluate the amount of rind beneath the 4-acre depression and determine whether it would be more cost effective to remove the rind rather than install the bioventing and groundwater circulation systems. Results of predesign data collection, which followed the RI for OU2, indicated that there was approximately 21,000 tons of rind in the 4-acre depression, as compared to the initial estimate of 45,000 tons. In addition, the amount of tar/creosote waste found in the Creosote Area amounted to only 225 tons, as compared to 15,000 tons. In September 2004, an Explanation of Significant Differences (ESD for OU2) was issued to document a change of two remedial action components from bioventing and groundwater circulation of the rind to excavation and off-site disposal. The remedial action component to address tar/creosote waste found in the Creosote Area was changed from excavation and transportation to an energy recovery facility to excavation and off-site disposal.

Through groundwater modeling and groundwater sampling conducted during the RI for OU2, EPA was confident that if the rind was removed, on-site groundwater would decrease to acceptable levels in between one to three years. Evaluation of current groundwater monitoring data upgradient and downgradient of the biosparge system indicates that the biosparge system is operating as designed and is effective. Contamination was not found in the East Tailing Area of the Tar Lake Site. EPA does not anticipate an adverse impact from this partial deletion. The East Tailing Area is upgradient from the contaminated rind and EPA has no further concern with groundwater beneath the East Tailing Area.

Characterization of Risk

The Remedial Investigation for OU2 has shown that there is no contamination present in the East Tailing Area. Therefore, there is not an unacceptable risk in the East Tailing Area. No additional response action is required at the East Tailing Area of the Tar Lake Site. The current conditions at the East Tailing Area are protective of human health and the environment.

Response Action for OU2

On June 14, 2004, EPA began remedial construction activities. Site preparation such as mobilization of equipment, road building, pad construction and removal of top soil and overburden continued until July 3, 2004. Approximately 4,000 cubic yards of top soil and 8,000 cubic yards of overburden (non-impacted soil and slag) were excavated from the 4-acre depression above the rind.

On July 7, 2004 and continuing through August 28, 2004, 21,482 tons of rind and 225 tons tar/creosote waste from the Creosote Area were excavated and disposed of locally at an approved RCRA Subtitle D landfill in Federick, Michigan. Removal of on-site foundations and miscellaneous debris impeding remediation and removal of the poly-liner to enhance infiltration were also completed. Remedial action costs associated with these activities were approximately $1,200,000.

A pre-final inspection was conducted by EPA and MDEQ on September 20, 2004. Site restoration activities such as backfilling, regrading and seeding the 4-acre depression had been properly conducted. Decontamination and demobilization of all equipment was completed at that time. The work trailers were demobilized the following day, which was September 21, 2004. EPA and MDEQ have determined that RA construction activities have been performed according to specifications and anticipate that removal and off-site disposal of the rind material will meet remedial action objectives for the Tar Lake Site.

Cleanup Standards

The objectives of the remedies were to ensure that by source removal, off-site groundwater would decrease over time and within 3 years, on-site groundwater would decrease to an acceptable level.

Operation and Maintenance

As part of the remedy requirement for long-term monitoring, EPA and MDEQ will conduct three groundwater sampling events per year. In addition, MDEQ will continue to operate the on-site biosparge system to treat residual contamination in the on-site groundwater.

Five-Year Review

Because hazardous substances will remain at other portions of the Tar Lake

Site above levels that allow for unrestricted use and unlimited exposure, the EPA will conduct periodic reviews at this Site. The review will be conducted pursuant to CERCLA 121(c) and as provided in the current guidance on Five Year Reviews; OSWER Directive 9355.7–03B–P, Comprehensive Five-Year Guidance, June 2001. The first five-year review for the Tar Lake Site is scheduled to be conducted before June 2009. In the East Tailing Area of the Tar Lake Site, unlimited use and unrestricted access is allowed.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the docket which EPA relied on for recommendation of the partial deletion of the East Tailing Area on the Tar Lake Site from the NPL are available to the public in the information repositories.

V. Partial Deletion Action

EPA, with concurrence of the State of Michigan, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary at the East Tailing Area. Therefore, EPA is deleting the East Tailing Area of the Tar Lake Site from the NPL.

This action will be effective November 21, 2005, unless EPA receives adverse comments by October 21, 2005. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this notice of partial deletion before the effective date of the partial deletion and it will not take effect. Concurrent with this action, EPA will prepare a response to comments and as appropriate continue with the partial deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 6, 2005.

Bharat Mathur,

Acting Regional Administrator, Region V.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended under Michigan ''MI'' by removing the entry for ''The East Tailing Area from the Tar Lake Site'' and the township ''Mancelona, Michigan.''

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Sitename	City/county	(Notes) [a]
* * * * * * *			
MI	Tar Lake	Antrim	P
* * * * * * *			

[a] * * *

P=Sites with partial deletion(s).

* * * * *

[FR Doc. 05–18834 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[CC Docket No. 02–6; FCC 04–190]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) announces that its rules adopted or amended in the Schools and Libraries Universal Service Support Mechanism Fifth Report and Order and Order (CC Docket No. 02–6; FCC 04–190), to the extent they contained information collection requirements that required approval by the Office of Management and Budget (OMB), were approved, and became effective on November 12, 2004, following approval by OMB.

DATES: The rules or amendments to 47 CFR 1.8003, 54.504(b)(2), 54.504(c)(1), 54.504(h), 54.508 and 54.516, published at 69 FR 55097, September 13, 2004 and corrected at 69 FR 59145, October 4, 2004 became effective on November 12, 2004.

FOR FURTHER INFORMATION CONTACT: Vickie Robinson, Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400. For additional information concerning the information collection contained in this document, contact Judith-B. Herman at (202) 418–0214, or at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: In the Schools and Libraries Universal Service Support Mechanism Fifth Report and Order and Order, the Commission adopted measures to protect against waste, fraud, and abuse in the administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, the Commission resolved a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and the Commission addressed programmatic concerns raised by its Office of Inspector General. A summary of the Schools and Libraries Universal Service Support Mechanism Fifth Report and Order and Order was published in the **Federal Register** on September 13, 2004, 69 FR 55097, and corrected on October 4, 2004, 69 FR 59145. In that summary, the Commission stated that with the exception of rules requiring OMB approval, the rules adopted in the Schools and Libraries Universal Service

Support Mechanism Fifth Report and Order and Order would become effective 30 days after publication in the **Federal Register**. With regard to rules requiring OMB approval, the Commission stated that it would publish a document in the **Federal Register** announcing the effective date of those sections. OMB approved and announced the information collection requirements in the **Federal Register** on November 12, 2004. See OMB No. 3060–0806. Accordingly, through this document, the Commission announces that November 12, 2004 will function as the effective date of the information collection requirements and the rules implementing them.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Investigations, Telecommunications.

47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18591 Filed 9–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 04–139; FCC 05–70]

WRC–03 Omnibus

AGENCY: Federal Communications Commission (FCC).

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations, which were published in the **Federal Register** on Wednesday, August 10, 2005 (70 FR 46576). The Commission published final rules in the 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). This document contains corrections to 47 CFR 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:

Background

The final regulations that are the subject of this correction relate to final rules in the 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), under § 2.106 of the rules.

Need for Correction

As published, the final regulations contain errors, which require immediate correction.

List of Subjects in 47 CFR Part 2

Radio, telecommunications.

■ Accordingly, 47 CFR part 2 is corrected by making the following correcting amendments:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising the introductory text to United States (US) Footnotes, Non-Federal Government (NG) Footnotes, and Federal Government (G) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations

* * * * *

United States (US) Footnotes

(These footnotes, each consisting of the letters ''US'' followed by one or more digits, denote stipulations applicable to both Federal and non-Federal operations and thus appear in both the Federal Table and the non-Federal Table.)

* * * * *

Non-Federal Government (NG) Footnotes

(These footnotes, each consisting of the letters ''NG'' followed by one or more digits, denote stipulations applicable only to non-Federal operations and thus appear solely in the non-Federal Table.)

* * * * *

Federal Government (G) Footnotes

(These footnotes, each consisting of the letter ''G'' followed by one or more digits, denote stipulations applicable only to Federal operations and thus appear solely in the Federal Table.)

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18845 Filed 9–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 53

[WC Docket No. 03–228; FCC 04–54]

Section 272(b)(1)'s ''Operate Independently'' Requirement for Section 272 Affiliates; Corrections

AGENCY: Federal Communications Commission.

ACTION: Final rule; Correcting amendments.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on March 30, 2004 (69 FR 16494), revising Commission rules. That document inadvertently failed to remove paragraphs (a)(2) and (a)(3), and redesignate paragraph (a)(1) as paragraph (a). This document corrects the final regulations by revising these sections.

DATES: Effective on September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Acting Assistant Chief, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686.

SUPPLEMENTARY INFORMATION: This is a correction of a final rule published in the **Federal Register** on March 30, 2004, 69 FR 16494.

List of Subjects in 47 CFR Part 53

Communications common carriers, Special provisions concerning bell operating companies, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Change

■ For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR part 53 as follows:

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

■ 1. The authority citation for part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

■ 2. Section 53.203(a) is revised to read as follows:

§ 53.203 Structural and transactional requirements.

(a) *Operational independence.* A section 272 affiliate and the BOC of which it is an affiliate shall not jointly own transmission and switching facilities or the land and buildings where those facilities are located.

* * * * *

[FR Doc. 05–18590 Filed 9–20–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–386; FCC 05–29]

Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved for three years the information collection requirements contained in the *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking*. The information collections contained in the *Report and Order* and the proposed information collections contained in the *Further Notice of Proposed Rulemaking* were approved by OMB on August 30, 2005. It is stated in the *Report and Order* that the Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

DATES: The rules published at 70 FR 32258, June 2, 2005, are effective September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Lisa Boehley, Policy Division, Consumer & Governmental Affairs Bureau, at (202) 418–2512.

SUPPLEMENTARY INFORMATION: This document announces that OMB has approved for three years the information collection requirements contained in *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking,* FCC 05–29 published at 70 FR 32258, June 2, 2005. The information collections were approved by OMB on August 30, 2005. OMB Control Number 3060–1084. The Commission publishes this notice of the effective date of the rules. If you have any comments on the burden estimates listed below, or how we can improve the collections and reduce any burdens caused thereby, please write to Leslie F. Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number 3060–1084, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of the collections via the Internet, if you send them to *Leslie.Smith@fcc.gov* or you may call (202) 418–0217.

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).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received approval from OMB on August 30, 2005, for the collections of information contained in the Commission's *Rules and Regulations Implementing Minimum Customer Account Record Exchange Obligations on All Local and Interexchange Carriers, Report and Order and Further Notice of Proposed Rulemaking*. The total annual reporting burden associated with these collections of information, including the time for gathering and maintaining the collections of information, is estimated to be: 1,778 respondents, a total annual hourly burden of 44,576 hours, and $1,114,400 in total annual costs. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid OMB 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 OMB Control Number. The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

List of Subjects in 47 CFR Part 64

Reporting and recordkeeping requirements, telecommunications, telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18592 Filed 9–20–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 091405G]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #7 - Closure of the Commercial Salmon Fishery from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Temporary rule; closure; request for comments.

SUMMARY: NMFS announces that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, was modified to close at midnight on Tuesday, August 23, 2005. On August 23, 2005, NMFS determined that available catch and effort data indicated that the modified quota of 15,700 Chinook salmon would be reached by midnight. This action was necessary to conform to the 2005 management goals.

DATES: Closure effective 2359 hours local time (l.t.), August 23, 2005, after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through October 6, 2005.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA7.nwr@noaa.gov* address, or through the internet at the Federal

eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [050426117–5117–01 and/or I.D. 091405G] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator closed the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, effective at midnight on Tuesday, August 23, 2005. On August 23, 2005, the Regional Administrator determined that available catch and effort data indicated that the modified quota of 15,700 Chinook salmon would be reached by midnight.

This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would open July 7 through the earlier of September 15 or a 14,250 preseason Chinook guideline or a 23,200–marked coho quota. Approximately 1,450 Chinook were left on the May-June quota, and these were added to the 14,250 guideline in the summer fishery for a total of 15,700 Chinook.

On August 23, 2005, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife. Information related to catch to date, the Chinook catch rate, and effort data indicated that it was likely that the Chinook quota would be reached by midnight. As a result, the states recommended, and the Regional Administrator concurred, that the commercial salmon fishery in the area from the U.S.-Canada Border to Cape Falcon, OR, would close effective at midnight on Tuesday, August 23, 2005. All other restrictions that apply to this fishery remained in effect as announced in the 2005 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the time the action was effective by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agency have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–18853 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 050426117–5117–01; I.D. 091405H]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #8 - Adjustment of the Recreational Fishery from the U.S.-Canada Border to Cape Alava, Washington

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

ACTION: Temporary rule; modification of fishing seasons; request for comments.

SUMMARY: NMFS announces a regulatory modification in the recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea). Effective Tuesday, August 30, 2005, the Neah Bay Subarea was modified to be open seven days per week. All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures.

DATES: Effective 0001 hours local time (l.t.), Tuesday, August 30, 2005, until the Chinook quota or coho quota are taken, or 2359 hours l.t., September 18, 2005, whichever is earlier; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through October 6, 2005.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501

W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2005salmonIA8.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [050426117–5117–01 and/or I.D. 091405] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) has adjusted the recreational fishery from U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), with one regulatory modification. On August 25, 2005, the Regional Administrator determined that the catch was less than anticipated preseason and that provisions designed to slow the catch of Chinook could be modified. Effective Tuesday, August 30, 2005, the Neah Bay Subarea was modified to be open seven days per week.

All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions. This action was necessary to conform to the 2005 management goals, and the intended effect is to allow the fishery to operate within the seasons and quotas specified in the 2005 annual management measures. Modification in recreational bag limits and recreational fishing days per calendar week is authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2005 annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), NMFS announced the recreational fisheries: the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) opened July 1 through the earlier of September 18 or a 12,667 marked coho subarea quota with a subarea guideline of 4,300 Chinook; the area from Cape Alava to Queets River, WA (La Push Subarea) opened July 1 through the earlier of September 18 or a 3,067 marked coho subarea quota with a subarea guideline of 1,900 Chinook; the area from Queets River to Leadbetter Point, WA (Westport Subarea) opened June 26 through the earlier of September 18 or a 45,066 marked coho subarea quota with a subarea guideline of 28,750 Chinook; the area from Leadbetter Point, WA to Cape Falcon, OR (Columbia River Subarea) opened July 3 through the earlier of September 30 or a 60,900–marked coho subarea quota with a subarea guideline of 8,200 Chinook. The Neah Bay and La Push Subareas were opened Tuesday through Saturday, and the Westport and Columbia River Subareas were opened Sunday through Thursday. All subareas had a provision specifying that there may be a conference call no later than July 27 to consider opening seven days per week. All subareas were restricted to a Chinook minimum size limit of 24 inches (61.0 cm) total length. In addition, all of the subarea bag limits were for all salmon, two fish per day, no more than one of which may be a Chinook, with all retained coho required to have a healed adipose fin clip.

The recreational fisheries in the area from Cape Alava, WA, to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas), were modified by Inseason Action #5 (70 FR 47727, August 15, 2005), effective Friday, July 29, 2005, to be open seven days per week, with a modified daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 Ocean Salmon Fisheries.

The recreational fishery from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified by Inseason Action #6 (70 FR 52035, September 1, 2005), effective Tuesday, August 16, 2005, to a have a daily bag limit as follows: ''All salmon, two fish per day, and all retained coho must have a healed adipose fin clip.'' All other restrictions remain in effect as announced for 2005 Ocean Salmon Fisheries.

On August 25, 2005, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the Chinook and coho catch rates, and effort data indicated that the catch was less than anticipated preseason and that the provision designed to slow the catch of Chinook could be modified by relaxing the recreational fishing days per calendar week from five days open to seven days. As a result, on August 25, 2005, the states recommended, and the RA concurred, that effective Tuesday, August 30, 2005, the Neah Bay Subarea would be modified to be open seven days per week. All other restrictions remain in effect as announced for 2005 ocean salmon fisheries, and by previous inseason actions.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (70 FR 23054, May 4, 2005), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies had insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data were collected to determine the extent of the fisheries, and the time the fishery modification had to be implemented in order to allow fishers access to the available fish at the time the fish were available. The AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3), as a delay in effectiveness of this action would limit fishers appropriately controlled access to available fish during the scheduled fishing season by unnecessarily maintaining the restriction. The action expanded to the recreational fishing days per calendar week from five days open to seven days.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

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

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–18854 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 091505A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) for 24 hours. This action is necessary to fully use the C season allowance of the 2005 total allowable catch (TAC) of pollock specified for Statistical Area 630.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 15, 2005, through 1200 hrs, A.l.t., September 16, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 30, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to *G63plk2s12b@noaa.gov* and include in the subject line of the e-mail comment the document identifier: g63plkro3 (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed the directed fishery for pollock in Statistical Area 630 of the GOA under § 679.20(d)(1)(iii) on August 27, 2005 (70 FR 51300, August 30, 2005). NMFS opened directed fishing for pollock in Statistical Area 630 of the GOA for 48 hrs on September 8, 2005 (70 FR 53971, September 13, 2005).

NMFS has determined that approximately 3,052 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2005 TAC of pollock in Statistical area 630, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 630 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 24 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA effective 1200 hrs, A.l.t., September 16, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 12, 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.

Without this inseason adjustment, NMFS could not allow the D season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 30, 2005.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–18750 Filed 9–15–05; 3:16 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 091505B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA) for 96 hours. This action is necessary to fully use the C season allowance of the 2005 total allowable catch (TAC) of pollock specified for Statistical Area 620.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 15, 2005, through 1200 hrs, A.l.t., September 19, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 30, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to *G63plk2s12b@noaa.gov* and include in the subject line of the e-

mail comment the document identifier: g62plkro3 (E-mail comments, with or without attachments, are limited to 5 megabytes); or

• Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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.

NMFS closed the directed fishery for pollock in Statistical Area 620 of the GOA under § 679.20(d)(1)(iii) on August 29, 2005 (70 FR 51300, August 30, 2005). NMFS opened directed fishing for pollock in Statistical Area 620 of the GOA for 96 hrs on September 8, 2005 (70 FR 53971, September 13, 2005).

NMFS has determined that approximately 2,740 mt of pollock remain in the directed fishing allowance. Therefore, in accordance with 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully utilize the C season allowance of the 2005 TAC of pollock in Statistical area 620, NMFS is terminating the previous closure and is reopening directed fishing for pollock in Statistical Area 620 of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 96 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA effective 1200 hrs, A.l.t., September 19, 2005.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish an action providing time for public comment because the most recent, relevant data only became available as of September 12, 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.

Without this inseason adjustment, NMFS could not allow the D season allowance of the 2005 TAC of pollock in Statistical Area 630 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 30, 2005.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

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

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–18751 Filed 9–15–05; 3:16 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 091605F]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole 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; rescinding the prohibition of retention.

SUMMARY: NMFS is rescinding the prohibition on retention of yellowfin sole in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2005 total allowable catch of yellowfin sole in the BSAI and to allow vessels to retain yellowfin sole and reduce discards.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 17, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 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 yellowfin sole in the BSAI was established as 83,883 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005) and the apportionment of the non-specified reserve to the yellowfin sole TAC on July 28, 2005 (70 FR 43644, July 28, 2005) and September 16, 2005 (70 FR 54656, September 16, 2005).

NMFS prohibited retention of yellowfin sole BSAI under § 679.20(d)(2) on August 24, 2005 (70 FR 50995, August 29, 2005).

NMFS has determined that approximately 240 mt of yellowfin sole remain in the directed fishing allowance. Therefore to fully utilize the 2005 TAC of yellowfin sole in the BSAI, NMFS is rescinding the prohibition on retention and is allowing that catches of yellowfin sole in this area be retained according to the maximum retainable amounts at 50 CFR 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such 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 immediately implementing this action in order to allow the retention of yellowfin sole by vessels fishing in the BSAI. Approximately 36 hook-and-line catcher/processors will be fishing in the BSAI into December. Approximately 240 metric tons of yellowfin sole TAC remains. Therefore, it is no longer necessary to prohibit retention of yellowfin sole. Allowing for prior notice and opportunity for public comment would prevent the fisheries from realizing the economic benefits of this action. In addition, this rule is not

subject to a 30- day delay in the effective date pursuant to 5 U.S.C. 553(d)(1) because it relieves a restriction. This action allows vessels to retain yellowfin sole and reduce discards.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

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

Dated: September 16, 2005.

Emily Menashes,

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

[FR Doc. 05–18850 Filed 9–16–05; 2:03 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 182
Wednesday, September 21, 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

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 04–088–2]

RIN 0579–ZA01

Animal Welfare; Standards for Ferrets: Extension of Comment Period

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Petition and request for comments; extension of comment period.

SUMMARY: We are extending the comment period for our notice announcing the receipt of a petition requesting that specific standards be promulgated for the humane handling, care, treatment, and transportation of domestic ferrets. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on Docket No. 04–088–1 on or before November 18, 2005.

ADDRESSES: You may submit comments by either of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate Docket 04–088–1.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–088–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–088–1.

Reading Room: You may read any comments that we receive on Docket 04–088–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7586.

SUPPLEMENTARY INFORMATION: On August 5, 2005, we published in the **Federal Register** (70 FR 45322–45323, Docket No. 04–088–1) a notice in which we announced the receipt of, and requested comments on, a petition from the International Ferret Congress. The petition requested that APHIS develop and promulgate specific standards for the care and handling of domestic ferrets (*Mustela furo*). Currently, the standards that apply to domestic ferrets are set forth in 9 CFR part 3, Subpart F, under the generic standards for warmblooded animals other than dogs, cats, rabbits, hamsters, guinea pigs, nonhuman primates, and marine mammals.

Comments on the petition were required to be received on or before October 4, 2005. We are extending the comment period on Docket No. 04–088–1 until November 18, 2005, an additional 45 days from the original close of the comment period. This action will allow interested persons additional time to prepare and submit comments.

Done in Washington, DC, this 9th day of September, 2005.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–18742 Filed 9–20–05; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 741

Requirements for Issuance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: NCUA proposes to amend its rule concerning financial and statistical reports to require all federally insured credit unions to file the same quarterly Financial and Statistical Report with NCUA. Under the amendment, all federally insured credits unions will file Form NCUA 5300 quarterly and the alternate Form NCUA 5300SF for credit unions with assets of less than ten million dollars will be eliminated.

DATES: Comments must be received on or before November 21, 2005.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- NCUA Web Site: *http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_* regs. html. Follow the instructions for submitting comments.
- E-mail: Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Proposed Rule Section 741.6,'' in the e-mail subject line.
- Fax: (703) 518–6319. Use the subject line described above for e-mail.
- Mail: Address to Mary F. Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: All public comments are available on the agency's Web site at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays

between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGCMail@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Matt Nixon, Risk Management Officer, or Larry Fazio, Director, Division of Risk Management, Office of Examination and Insurance, at the above address or telephone number: (703) 518–6360; or Regina M. Metz, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Proposed Change

The NCUA Board proposes revising § 741.6(a), the provision governing the filing of quarterly Financial and Statistical Reports, also known as Call Reports or 5300 reports. 12 CFR 741.6(a). The NCUA Board last revised § 741.6(a) in 2002. 67 FR 12464, March 19, 2002. Before those 2002 revisions, this section required all federally insured credit unions with assets in excess of $50 million to file a quarterly call report with NCUA. All other federally insured credit unions filed semiannually.

Since the 2002 amendments, all federally insured credit unions are required to file quarterly Call Reports, but credit unions with less than ten million dollars in assets have the option of filing a short form for the first and third quarters. The current proposed amendment would require all federally insured credit unions to file the same quarterly call report form, a revised Form NCUA 5300.

The revised Form NCUA 5300 consolidates information, reduces ancillary schedules, and is easier to read and use. Based on the revisions, the short form is no longer needed. NCUA's regional offices have reviewed the proposed consolidated format and have concurred with this recommendation to improve efficiency.

The new design provides many benefits for credit unions. The Call Report form will have a consistent appearance each cycle, which will eliminate confusion for smaller credit unions, and it is shorter: 16 pages compared to 19 pages in the current version. In addition, the revised form is designed so small credit unions generally will not have to complete supporting schedules. Only the first ten pages require input by all credit unions. For comparison, the current short form is only eight pages but the new, easier format will reduce the burden. NCUA currently reports to the Office of Management and Budget an average completion time of 6.6 hours for the regular Form NCUA 5300 and 6.0 hours for the Form NCUA 5300SF. The consolidated form should not materially impact the time spent by smaller credit unions, meaning those under ten million dollars in assets.

The new design also provides efficiencies and benefits to NCUA. By eliminating the short form NCUA only has to maintain one 5300 form, one set of edits and warnings, and one set of Financial Performance Report specifications. This will improve efficiency and reduce the likelihood of introducing errors in the reporting system. In addition, the burden on the Office of the Chief Financial Officer and the cost of printing and mailing will be reduced with the distribution of a single form. Both internal and external quarterly financial trend analysis will be improved, since comprehensive quantitative data will be reported by all credit unions. Further, the shift to one Call Report will simplify maintenance of the Financial Performance Report and provide additional data needed for small credit unions to utilize fully the expanded Financial Performance Report. Additionally, trend reports from NCUA's Automated Integrated Regulatory Examination System (AIRES) will be more consistent and detailed for smaller credit unions. For example, quarterly detail that is currently not provided for real estate loans and investments will be available when applicable.

In summary, the consolidation of the Call Report and elimination of the Form NCUA 5300SF will improve the agency's efficiency, increase the accuracy of the information collected, and simplify the reporting process for credit unions, large and small. NCUA plans to implement the revised form in September 2006. Accordingly, NCUA is proposing the corresponding changes in NCUA's regulation on financial and statistical and other reports, section 741.6, to reflect the revision to the single Call Report system.

Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board previously determined that the rule to require all federally insured credit unions to file a Call Report form on a quarterly basis is covered under the Paperwork Reduction Act.

Currently, credit unions with assets less than ten million dollars have the option in the first and third quarters of filing the NCUA 5300SF with NCUA. We now report to OMB an average completion time of 6.6 hours for the regular Form NCUA 5300 and 6.0 hours for the Form NCUA 5300SF. NCUA estimated annually 38,050 forms are submitted to NCUA, with an average annual completion time of 251,130 hours, at an annual cost of $5,497,542. OMB approved the information collections under both Forms NCUA 5300 and NCUA 5300SF as OMB number 3133–0004.

NCUA is submitting a copy of this proposed rule and revised Form NCUA 5300 to OMB for its review. The revised consolidated form should not materially impact the time spent by credit unions. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimate on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements. The time required by a federally insured credit union to complete the call report will depend on the complexity of its operations. The NCUA Board is especially interested in receiving comments on the actual hours it takes a credit union to complete its call report based on its asset size and complexity of operations. The actual hours should exclude the time associated with the month-end closing and the preparation of the monthly financial statements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503; Attention: Mark Menchik, Desk Officer for NCUA. Please send NCUA a copy of any comments you submit to OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. 5 U.S.C. 601–612. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposal requires all federally insured credit unions to complete the same, revised, Form NCUA 5300.

The NCUA has determined and certifies that this proposed rule, if adopted, will not have a significant

economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required. NCUA solicits comment on this analysis and welcomes any information that would suggest a different conclusion.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This proposed rule, if adopted, will not have substantial direct effects on the states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear. The proposed regulatory change is understandable and imposes minimal regulatory burden. NCUA requests comments on whether the proposed rule change is understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 741

Credit Unions, Requirements for Insurance

By the National Credit Union Administration Board on September 15, 2005.

Mary Rupp,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 741 as follows:

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub. L. 101–73.

2. Amend § 741.6 by revising paragraph (a) to read as follows:

§ 741.6 Financial and statistical and other reports.

(a) Each operating insured credit union must file with the NCUA a quarterly Financial and Statistical Report on Form NCUA 5300 according to the deadlines published on the Form NCUA 5300, which occur in January (for quarter-end December 31), April (for quarter-end March 31), July (for quarter-end June 30), and October (for quarter-end September 30) of each year.

* * * * *

[FR Doc. 05–18748 Filed 9–20–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

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

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. The proposed AD would have required performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and, for certain airplanes, installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. The proposed AD also would have required eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which would terminate the repetitive inspections. This new action revises the proposed rule by requiring installing a new spring cartridge and implementing new logic for the electromechanical gust lock system on additional airplanes. The actions specified by this new proposed AD are intended to prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 11, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–89–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–89–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 22, 2004 (69 FR 56735) (referred to after this as ''the first supplemental NPRM''). That action proposed to require performing repetitive inspections for cracks, ruptures, or bends in certain components of the elevator control system; replacing discrepant components; and installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. That action also proposed to require eventual modification of the elevator gust lock system to replace the mechanical system with an electromechanical system, which would terminate the repetitive inspections. The proposed AD was prompted by a report that cracks have been found in certain components of the elevator control system in the horizontal stabilizer area of several airplanes equipped with a mechanical gust lock system. That condition, if not corrected, could result in discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane.

Explanation of New Relevant Service Information

EMBRAER has issued Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005. (Paragraph (c)(1) of the first supplemental NPRM refers to EMBRAER Service Bulletin 145–27–0075, Change 06, dated July 16, 2002, as the applicable source of service information for the actions required by that paragraph.) EMBRAER Service Bulletin 145–27–0075, Revision 08, contains a new Part IV (originally added in Revision 07 of the service bulletin, March 2, 2004), which describes procedures for installing a new spring cartridge and implementing new logic for the electromechanical gust lock system. Part IV of EMBRAER Service Bulletin 145–27–0075, Revision 08, refers to EMBRAER Service Bulletins 145–27–0101 (currently at Revision 02, dated December 27, 2004) and 145–27–0102 (currently at Revision 02, dated January 20, 2005) as additional sources of service information. We have revised paragraph (c)(1) in this second supplemental NPRM to require accomplishing EMBRAER Service Bulletin 145–27–0075, Revision 08, for the airplanes listed in that service bulletin. We have added paragraphs (d)(1) and (d)(2) to this supplemental NPRM to give credit for actions accomplished before the effective date of this AD in accordance with Change 06 or Revision 07 of the service bulletin, provided that Part IV of Revision 07 or 08 is done. We have also added a new Note 2 in this second supplemental NPRM to state that EMBRAER Service Bulletin 145–27–0075, Revision 08, refers to EMBRAER Service Bulletins 145–27–0101 and 145–27–0102, which are currently at Revision 02, as additional sources of service information.

EMBRAER has also issued Service Bulletin 145–27–0086, Change 04, dated March 21, 2005. (Paragraph (c)(2) of the first supplemental NPRM refers to EMBRAER Service Bulletin 145–27–0086, Change 02, dated December 23, 2003, as the applicable source of service information for the actions required by that paragraph.) EMBRAER Service Bulletin 145–27–0086, Change 04, describes procedures that are similar to those in Change 02 of that service bulletin. We have revised paragraph (c)(2) of this second supplemental NPRM to refer to EMBRAER Service Bulletin 145–27–0086, Change 04. We have also added paragraph (d)(3) to this supplemental NPRM to state that actions accomplished before the effective date of the AD in accordance with EMBRAER Service 145–27–0086, Change 02, or Change 03, dated April 14, 2004, are acceptable for compliance with paragraph (c)(2) of this supplemental NPRM. We have also revised Note 3 of this second supplemental NPRM to state that EMBRAER Service Bulletin 145–27–0086, Change 04, refers to EMBRAER Service Bulletins 145–27–0101 and 145–27–0102, which are currently at Revision 02, as additional sources of service information.

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, approved EMBRAER Service Bulletin 145–27–0075, Revision 08, and EMBRAER Service Bulletin 145–27–0086, Change 04. The DAC does not intend to revise Brazilian airworthiness directive 2002–01–01R3, dated November 8, 2002 (which the original NPRM and first supplemental NPRM refer to as the parallel Brazilian airworthiness directive), because the actions specified in EMBRAER Service Bulletins 145–27–0101 and 145–27–0102; which have been added to EMBRAER Service Bulletin 145–27–0075, Revision 08, and EMBRAER Service Bulletin 145–27–0086, Change 04; are already required by another Brazilian airworthiness directive, 2003–01–03 R1, dated August 26, 2004. (Also, 2002–01–01R3 refers to EMBRAER Service Bulletin 145–27–0086, Change 01, and EMBRAER Service Bulletin 145–27–0075, Change 06, or further approved revisions, as the acceptable source of service information for certain actions in that airworthiness directive.)

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Allow Installation of Other Replacement Parts

One commenter requests that we revise paragraph (b) of the first supplemental NPRM to remove the reference to replacing a discrepant part of the elevator control system ''with a new part having the same part number.'' The commenter notes that this does not account for the possibility that part numbers will be revised in future modifications of the elevator control system. The commenter asks that we allow installation of equivalent or superseded parts as listed in the applicable Illustrated Parts Catalog.

We agree with the commenter's request. We have revised paragraph (b) in this second supplemental NPRM to remove the stipulation that a replacement part must have the same part number.

Request To Remove Note 2 of Supplemental NPRM

One commenter requests that we remove the reference, in Note 2 of the first supplemental NPRM, to EMBRAER Service Bulletin 145–22–0007 as an additional source of service information for reworking the control stand. The commenter states that the procedures in that service bulletin are not related to the modifications of the elevator control system and are instead related to rerouting the ''go around'' wires.

We agree. Paragraph 3.C.(1) of EMBRAER Service Bulletin 145–27–0086, Change 04, states that ''To install the new wiring guides and the wiring mountings of the thrust lever 'go around' switch, it is necessary that SB 145–22–0007 be accomplished.'' (Similarly, paragraph 3.D.(3) of EMBRAER Service Bulletin 145–27–0075, Revision 08, states that, for airplanes with certain control stands, 145–22–0007 ''should be accomplished.'') Thus, we included the reference to EMBRAER Service Bulletin 145–22–0007 as a convenience for operators. Upon further review of EMBRAER Service Bulletin 145–27–0086, Change 04; EMBRAER Service Bulletin 145–27–0075, Revision 08; and EMBRAER Service Bulletin 145–22–0007; we have determined that it is not necessary to include the reference to EMBRAER Service Bulletin 145–22–0007 in this AD. The contents of Note 2 of the first supplemental NPRM have not been included in this second supplemental NPRM. We note, however, that if not doing actions specified in EMBRAER Service Bulletin 145–22–0007 results in an inability to comply with proposed requirements of this AD, operators must request approval of an alternative method of compliance (AMOC) for the corresponding requirements of this AD.

Request To Consider AMOC for AD 2002–26–51

One commenter notes that certain requirements proposed in the first supplemental NPRM should be considered an AMOC for requirements of AD 2002–26–51, amendment 39–13008 (68 FR 488, January 6, 2003). That AD applies to certain EMBRAER Model EMB–135 and –145 series airplanes, and requires revising the Limitations section of the Airplane Flight Manual to advise the flightcrew of the possibility of locking of the elevator during takeoff and provides proper procedures to prevent it. The commenter notes that accomplishing EMBRAER Service Bulletin 145–27–0101 (implementation of the new gust lock logic) eliminates the need for these actions.

We agree. We have reviewed the requirements of AD 2002–26–51 and have determined that accomplishing EMBRAER Service Bulletin 145–27–0101 does eliminate the need for the AFM revision required by AD 2002–26–51. Accordingly, we have revised paragraphs (c)(1) and (c)(2)(iv) of this second supplemental NPRM to specify that, after implementing the new gust lock logic, the AFM revision required by AD 2002–26–51 may be removed from the Limitations section of the AFM. In addition, we may consider further rulemaking action in the future to revise AD 2002–26–51 to acknowledge that EMBRAER Service Bulletin 145–27–0101 eliminates the need for the AFM revision required by AD 2002–26–51.

Request To Provide Terminating Action for AD 2003–09–03

Two commenters request that we revise AD 2003–09–03 to specify that accomplishing EMBRAER Service Bulletin 145–27–0086, including EMBRAER Service Bulletin 145–27–0102, terminates the requirements of AD 2003–09–03, amendment 39–13132 (68 FR 22585, April 29, 2003). That AD applies to certain EMBRAER Model EMB–135 and –145 series airplanes and requires repetitive inspections of the spring cartridges of the elevator gust lock system, and corrective action if necessary. The commenters note that replacing the spring cartridges of the elevator gust lock system with new, improved spring cartridges, in accordance with EMBRAER Service Bulletin 145–27–0102, eliminates the potential for jamming of the elevator due to the spring cartridges unscrewing in the gust lock system, which is the unsafe condition that is addressed in AD 2003–09–03. The commenters note that this terminating action has been added to Brazilian airworthiness directive 2003–01–03 R1. (AD 2003–09–03 refers to the original issue of Brazilian airworthiness directive 2003–01–03, dated February 10, 2003, as the parallel Brazilian airworthiness directive.)

We agree with the commenter's request. Accomplishing EMBRAER Service Bulletin 145–27–0102, as specified by EMBRAER Service Bulletin 145–27–0086, Change 04, and EMBRAER Service Bulletin 145–27–0075, Revision 08, as applicable, terminates the requirements of AD 2003–09–03. We have revised paragraphs (c)(1) and (c)(2)(iv) of this second supplemental NPRM to state this. In addition, we may consider further rulemaking action in the future to revise AD 2003–09–03 to include the actions that were added to Brazilian airworthiness directive 2003–01–03 R1.

Request To Consider Alternative Action

One commenter requests that we allow operators an alternative of performing repetitive inspections at intervals not to exceed 500 flight hours instead of installing the new gust lock. The commenter states that the electric gust lock has a higher failure rate than the mechanical lock, so there should be some other solution besides requiring all operators to install an electric gust lock. The commenter also suggests that the manufacturer has sufficient time to develop a method of reinforcing the horizontal stabilizer to correct the problem rather than installing a gust lock system. The commenter also notes that doing the installation will cause airplanes to be out of service for up to a week beyond what is necessary for normal inspections.

We do not agree with the commenter's request to add repetitive inspections as an alternative to replacing the mechanical elevator gust lock system with an electromechanical system. The commenter did not submit data substantiating that repetitive inspections would provide an acceptable level of safety. We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is consistent with these considerations. We have not changed this second supplemental NPRM in this regard.

Regarding the commenter's statements that there are deficiencies with the new gust lock system, we are not aware of any deficiencies with this system. We have reviewed the service history of the electric gust lock, and the data do not show a high failure rate. We have not changed this second supplemental NPRM in this regard.

Request To Revise Estimate of Cost Impact

One commenter requests that we revise the Cost Impact estimate for the actions in EMBRAER Service Bulletin 145–27–0086. The commenter notes that the first supplemental NPRM estimates 133 work hours for these actions. The commenter recommends that we consider the 230-work-hour estimate specified in the service bulletin. The commenter also states that this figure doesn't consider other service bulletins that need to be completed along with that service bulletin, which the commenter estimates could run up to 338 work hours.

We do not agree. The 230-work-hour estimate to which the commenter refers includes time for disassembly and assemblage. These are considered incidental costs. We recognize that, in doing the actions required by an AD, operators may incur incidental costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. The estimate of 133 work hours stated in the first supplemental NPRM is consistent with the estimate provided in the service bulletin when the incidental costs are omitted. We have not changed this second supplemental NPRM in this regard.

Conclusion

Since certain changes described previously expand the scope of the proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

We estimate that 300 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane, per inspection cycle, to accomplish the proposed inspection, at an average labor rate is $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $19,500, or $65 per airplane, per inspection cycle.

We estimate that 108 airplanes of U.S. registry would be subject to EMBRAER Service Bulletin 145–27–0075, Revision 08. For these airplanes, it would take up to 65 work hours to accomplish the proposed modification in that service bulletin, at an average labor rate of $65 per work hour. Required parts would cost up to $14,000 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be up to $1,968,300, or $18,225 per airplane.

We estimate that 192 airplanes of U.S. registry would be subject to EMBRAER Service Bulletin 145–27–0086, Change 04. For these airplanes, it would take approximately 133 work hours to accomplish the proposed modification in that service bulletin, at an average labor rate of $65 per work hour. Required parts would cost up to $23,164 per airplane. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be up to $6,107,328, or $31,809 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2002–NM–89–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category; serial numbers 145001 through 145189 inclusive, 145191 through 145362 inclusive, 145364 through 145373 inclusive, 145375, 145377 through 145411 inclusive, 145413 through 145424 inclusive, 145426 through 145430 inclusive, 145434 through 145436 inclusive, 145440 through 145445 inclusive, 145448, 145450, and 145801; equipped with a mechanical gust lock system.

Compliance: Required as indicated, unless accomplished previously.

To prevent discrepancies in the elevator control system, which could result in reduced control of the elevator and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Within 800 flight hours after the effective date of this AD, do a detailed

inspection of the elevator control system for any crack, rupture, or bend in any component, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002. Where this service bulletin specifies to return discrepant parts and report inspection results to the manufacturer, this AD does not require these actions. Repeat the inspection thereafter at intervals not to exceed 2,500 flight hours or 15 months, whichever is first.

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.''

Replacement of Discrepant Parts

(b) If any discrepant part is found during any inspection required by paragraph (a) of this AD, before further flight, replace the discrepant part with a new part, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0087, Change 03, dated September 27, 2002.

Modification

(c) Within 10,000 flight hours or 60 months after the effective date of this AD, whichever is first, modify the elevator gust lock by accomplishing paragraph (c)(1) or (c)(2) of this AD, as applicable. This modification terminates the repetitive inspections required by paragraph (a) of this AD.

(1) For airplanes listed in EMBRAER Service Bulletin 145–27–0075, Revision 08, dated March 3, 2005: Do paragraph (c)(1)(i) or (c)(1)(ii) of this AD, as applicable, and install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all actions in section 3.D. (Part IV) of the Accomplishment Instructions of the service bulletin. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08; the Airplane Flight Manual (AFM) revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the AFM. Accomplishing the actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0102; as specified by EMBRAER Service Bulletin 145–27–0075, Revision 08; terminates the repetitive inspections required by AD 2003–09–03, amendment 39–13132.

(i) Replace the mechanical gust lock system with an electromechanical gust lock system, and replace the control stand with a reworked control stand, by doing all the actions (including a detailed inspection to ensure that certain parts have been removed previously per EMBRAER Service Bulletin 145–27–0076) in and per section 3.A. (Part I) or 3.B. (Part II) of the Accomplishment Instructions of the service bulletin, as applicable. If the inspection reveals that certain subject parts have not been removed previously, before further flight, remove the subject parts in accordance with the service bulletin. Where Parts I and II of the Accomplishment Instructions of the service bulletin specify to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in the service bulletin.

(ii) Replace the return spring and spring terminal of the gust lock control lever with improved parts by doing all the actions in and per section 3.C. (Part III) of the Accomplishment Instructions of the service bulletin.

Note 2: Part IV of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0075, Revision 08, refers to EMBRAER Service Bulletin 145–27–0101, currently at Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, currently at Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

(2) For airplanes listed in EMBRAER Service Bulletin 145–27–0086, Change 04, dated April 14, 2004: Do paragraphs (c)(2)(i), (c)(2)(ii), (c)(2)(iii), and (c)(2)(iv) of this AD, as applicable.

(i) Rework the tail carbon box and the horizontal stabilizer by doing all the actions (including the inspection for delamination) in and per section 3.A. (Part I) of the Accomplishment Instructions of the service bulletin. If any delamination is found that is outside the limits specified in the service bulletin, before further flight, repair per a method approved by either the FAA or the Departmento de Aviacao Civil (or its delegated agent).

(ii) Install wiring and electrical components by doing all the actions in and per section 3.B. (Part II) of the Accomplishment Instructions of the service bulletin.

(iii) Install and activate the electromechanical gust lock system by doing all actions in section 3.D. (Part IV) of the Accomplishment Instructions of the service bulletin. Where Part IV of the Accomplishment Instructions of the service bulletin specifies to remove and ''send the control stand to be reworked in a workshop,'' replace the control stand with a control stand reworked as specified in Part III of the service bulletin.

(iv) Install a new spring cartridge and implement new logic for the electromechanical gust lock system by doing all actions in section 3.E. (Part V) of the Accomplishment Instructions of the service bulletin, as applicable. After accomplishing the actions in EMBRAER Service Bulletin 145–27–0101; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04; the AFM revision required by AD 2002–26–51, amendment 39–13008, may be removed from the Limitations section of the AFM. Accomplishing the actions in EMBRAER Service Bulletin 145–27–0102; as specified in the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04; terminates the repetitive inspections required by AD 2003–09–03, amendment 39–13132.

Note 3: Part V of the Accomplishment Instructions of EMBRAER Service Bulletin 145–27–0086, Change 04, refers to EMBRAER Service Bulletin 145–27–0101, currently at Revision 02, dated December 27, 2004; and EMBRAER Service Bulletin 145–27–0102, currently at Revision 02, dated January 20, 2005; as additional sources of instructions for accomplishing the installation of a new spring cartridge and implementation of the new logic for the electromechanical gust lock system.

Actions Accomplished Previously

(d) Actions accomplished before the effective date of this AD are acceptable for compliance with corresponding requirements of this AD as specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0075, Change 06, dated July 16, 2002, is acceptable for compliance with paragraph (c)(1) of this AD, provided that, within the compliance time specified in paragraph (c) of this AD, a new spring cartridge is installed and new logic for the electromechanical gust lock system is implemented in accordance with Part IV of EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, or Revision 08, dated March 3, 2005.

(2) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0075, Revision 07, dated March 2, 2004, is acceptable for compliance with paragraph (c)(1) of this AD.

(3) Modification of the elevator gust lock system before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–27–0086, Change 02, dated December 23, 2003; or EMBRAER Service Bulletin 145–27–0086, Change 03, dated April 14, 2004; is acceptable for compliance with paragraph (c)(2) of this AD.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 2002–01–01R3, dated November 8, 2002.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18793 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22481; Directorate Identifier 2004–NM–176–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. The existing AD currently requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with revised procedures for checking the flap system. The existing AD also requires revising the maintenance program to provide procedures for checking the flap system, and performing follow-on actions, if necessary. This proposed AD would require installing new flap actuators, a new or retrofitted air data computer, a new skew detection system, and new airspeed limitation placards; and revising the AFM to include revised maximum allowable speeds for flight with the flaps extended, and a new skew detection system/crosswind-related limitation for take-off flap selection. This proposed AD is prompted by a number of cases of flap system failure that resulted in a twisted outboard flap panel. We are proposing this AD to prevent an unannunciated failure of the flap system, which could result in a flap asymmetry and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 21, 2005.

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

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

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

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22481; the directorate identifier for this docket is 2004–NM–176–AD.

FOR FURTHER INFORMATION CONTACT: Daniel Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–22481; Directorate Identifier 2004–NM–176–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On September 17, 1998, we issued AD 98–20–01, amendment 39–10767 (63 FR 49661, September 17, 1998), for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100) series airplanes. That AD requires revising the airplane flight manual (AFM) to provide the flight crew with revised procedures for checking the flap system. That AD also requires revising the maintenance program to provide procedures for checking the flap system, and performing follow-on actions, if necessary. That AD was prompted by issuance of mandatory continuing airworthiness information by a civil airworthiness authority of another country. We issued that AD to prevent an unannunciated failure of the flap system, which could result in a flap asymmetry, and consequent reduced controllability of the airplane.

Actions Since Existing AD Was Issued

A number of flap systems had failed and caused twisted outboard flap panels before we issued AD 98–20–01. An internal fault within the number 3 flap actuator (the inboard actuator on the outboard flap) caused the failures. In one case, a twisted flap was not detected before take-off, while in other cases the twisted flap occurred on deployment of the flaps for landing. In all cases the airplane was controllable and landed successfully. Several other cases have occurred while the airplanes were on the ground.

Since we issued AD 98–20–01, Transport Canada Civil Aviation (TCCA) has issued its applicable revised airworthiness directive, CF–1998–14R4, dated June 1, 2004 (AD 98–20–01 refers to CF–1998–14, dated July 6, 1998). The revision to airworthiness directive CF–1998–14 changes the text of the revisions to the airplane flight manual (AFM) that were mandated by TCCA and that we also mandated in AD 98–20–01. In addition, the revision to airworthiness directive CF–1998–14

also mandates the following: installing new airspeed limitation placards and decals; doing certain maintenance actions following a ''FLAPS FAIL'' caution message, including replacing both actuators if necessary; establishing a ''health check'' program for the number 3 flap actuator which includes incorporating Canadair Temporary Revision (TR) RJ/71 into the Canadair Regional Jet AFM (to reflect the airspeed limitations); installing new flap actuators, a new or retrofitted air data computer (ADC), and a new skew detection system (SDS) for the outboard flaps; and revising the Limitations section of the Canadair Regional Jet AFM to include the information specified in Canadair TR RJ/128, to include revised maximum allowable speeds for flight with the flaps extended (V^{FE}), and a new SDS/crosswind-related limitation for take-off flap selection.

In addition, in the preamble to AD 98–20–01 we specified that we considered the requirements ''interim action'' and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a final action is identified. The final action has now been identified, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

Bombardier (Canadair) has issued TR RJ/128, dated November 28, 2003, to the Canadair Regional Jet AFM, CSP A–102. This TR includes revised VFE values, and a new SDS/crosswind-related limitation for take-off flap selection.

Bombardier (Canadair) has also issued the service bulletins identified in the following table, for Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes having serial numbers 7003 through 7903 inclusive as identified in each service bulletin.

BOMBARDIER (CANADAIR) SERVICE BULLETINS

Bombardier Service Bulletin	Revision	Date	Procedure
601R–11–080	Original	November 28, 2003	Install new airspeed limitation placards.
601R–27–111	Original	March 6, 2000	Remove decal.
601R–27–114, including Appendix A.	B	December 4, 2003	Replace #3 inboard and #4 outboard flap actuators for the outboard flaps.
601R–27–115	D	March 18, 2004	Install electrical provisions for the SDS.
601R–27–116	B	February 2, 2004	Install and activate the SDS.
601R–34–128	B	September 7, 2001	Install the air data computer (ADC) containing software with reduced flap overspeed.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information, and issued Canadian airworthiness directive CF–1998–14R4, dated June 1, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada 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, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

This proposed AD would supersede AD 98–20–01. This proposed AD would retain the requirements of the existing AD. This proposed AD also would require installing new flap actuators, a new or retrofitted air data computer, a new skew detection system, and new airspeed limitation placards; and revising the AFM to include revised maximum allowable speeds for flight with the flaps extended, and a new skew detection system/crosswind-related limitation for take-off flap selection. Doing the new proposed actions would terminate the requirements of the existing AD.

Difference Between the Proposed AD and the Canadian Airworthiness Directive

The Canadian airworthiness directive includes several actions that are not included in this proposed AD: incorporating revised AFM procedures for checking the flap system; installing new airspeed limitation placards and decals; doing certain maintenance actions following a ''FLAPS FAIL'' caution message, including replacing both actuators if necessary; establishing a ''health check'' program for the number 3 flap actuator; and incorporating TR RJ/71 into the AFM (to reflect the airspeed limitations). We have determined that these actions were mandated by TCCA as interim actions until a final action was developed by the manufacturer. We find that the revision to the AFM that was previously mandated by AD 98–20–01 provides an adequate level of safety without our mandating the interim actions specified in the Canadian airworthiness directive. Mandating these interim actions would add an additional cost burden to operators without improving safety.

This difference has been coordinated with TCCA.

Changes to Existing AD

This proposed AD would retain all requirements of AD 98–20–01. Since AD 98–20–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 98–20–01	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (g).

In addition, Note 2 from the existing AD has been changed to Note 1. The information from Note 1 in AD 98–20–01 has been incorporated into paragraph (l) of this proposed AD.

Explanation of Change to Applicability

We have revised the applicability to reflect the model designations as published in the most recent type certificate data sheets.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. For all actions the average labor rate is $65 and

the number of U.S.-registered airplanes is 651.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airlane	Fleet cost
Revise the AFM (required by AD 98–20–01)	1	N/A	$65	$42,315
Revise the maintenance (required by AD 98–20–01)	1	N/A	65	42,315
Install ADC (new proposed action)	1	No Charge	65	42,315
Install #3 and #4 flap actuators (new proposed action)	18	No Charge	1,170	761,670
Install skew detection system (new proposed action)	147	No Charge	9,555	6,220,305
Install new airspeed limitation placards (new proposed action)	1	No Charge	65	42,315
Revise the AFM (new proposed action)	1	N/A	65	42,315

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–10767 (63 FR 49661, September 17, 1998) and adding the following new airworthiness directive (AD):

Bombardier, Inc. (Formerly Canadair):
Docket No. FAA–2005–22481; Directorate Identifier 2004–NM–176–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 21, 2005.

Affected ADs

(b) This AD supersedes AD 98–20–01.

Applicability

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 400) airplanes, certificated in any category, serial numbers 7003 through 7903 inclusive.

Unsafe Condition

(d) This AD was prompted by a number of cases of flap system failure that resulted in a twisted outboard flap panel. We are issuing this AD to prevent an unannunciated failure of the flap system, which could result in a flap asymmetry and consequent reduced controllability of the airplane.

Compliance

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

Restatement of the Requirements of AD 98–20–01

Note 1: Bombardier Service Letter RJ–SL–27–002A, dated April 8, 1998, and Service Letter RJ–SL–27–037, dated July 2, 1998, may provide operators with additional information concerning the actions required by this AD. However, accomplishment of the procedures specified in these service letters should not be considered to be an acceptable method of compliance with the requirements of this AD.

(f) Within 10 days after October 2, 1998 (the effective date of AD 98–20–01), accomplish the requirements of paragraphs (f)(1), (f)(2), and (f)(3) of this AD.

(1) Revise the Limitations Section of the FAA-approved airplane flight manual (AFM) to include the following procedures and Figures 1 and 2 of this AD. After accomplishing the actions in paragraphs (h) and (i) of this AD, remove the revisions required by this paragraph of this AD from the AFM.

''Air Operator Actions

IMPORTANT: If the outboard flap position is outside the 'GO' range, as shown in figure 2., further flight is prohibited until required maintenance actions have been accomplished.

1. Touch-and-go landings for the purposes of training must be accomplished using a flap setting of 20 degrees for the entire procedure.

2. (a) Take-off flaps must be set prior to departure, and

(b) An external visual check must be accomplished to detect any twisting, skewing, or abnormal deformation of the flaps, using the information given in Figures 1 and 2.

Note 1: If the outboard flap position is outside the 'GO' range as shown in figure 2., further flight is prohibited until required maintenance actions have been accomplished.

Note 2: This visual check must be accomplished either by a member of the flight crew or by maintenance personnel, and the results reported directly to the pilot-in-command prior to take-off.

3. If any additional change to the flap position is necessary, prior to take-off, accomplish the visual check specified by the preceding paragraph 2. (b).''

(2) Revise the Normal Procedures Section of the FAA-approved AFM to include the following procedures:

''To minimize a possible flap twist in flight when operating flaps, operate the flap selector sequentially, stopping at each setting (*i.e.*, 0 degrees, 8 degrees if applicable, 20 degrees, 30 degrees, 45 degrees; or operate the flap selector in reverse order), and waiting for the flaps to reach each position before selecting the next setting. Monitor the control wheel for abnormal control wheel angles during each transition in flap position.

Note: This procedure is not applicable during a go-around or during any emergency aircraft handling procedure where prompt flap retraction is required. In these cases, follow the applicable AFM procedures.''

(3) Revise the Abnormal Procedures Section of the FAA-approved AFM to include the following procedures.

''If abnormal aileron control wheel angles develop during flap operation with the autopilot on, or if the aircraft rolls without pilot input with the autopilot off (with or without a 'FLAPS FAIL' caution message), perform the following actions:

1. If flaps are being extended, immediately return the flaps to the previously selected position (*e.g.*, for flaps selected from 8 degrees to 20 degrees, re-select 8 degrees).

2. If flaps are being retracted, the flap selector should remain in the currently selected position (*e.g.*, for flaps selected from 20 degrees to 8 degrees, leave selector at 8 degrees).

3. Do not attempt to operate the flaps any further.

4. If the flaps are engaged, disconnect the autopilot.

Note: When disconnecting the autopilot, anticipate an out-of-trim situation and hold the aileron control wheel in its current position.

5. For landing, perform the 'Flaps Failure' procedure for the following conditions:

(a) If an abnormal aileron control wheel angle to the left develops, do not land if a crosswind from the left is greater than 20 knots.

(b) If an abnormal aileron control wheel angle to the right develops, do not land if a crosswind from the right is greater than 20 knots.

6. After landing, do not attempt to retract the flaps. Record the event in the Aircraft Maintenance Log Book and notify the person responsible for maintenance.''

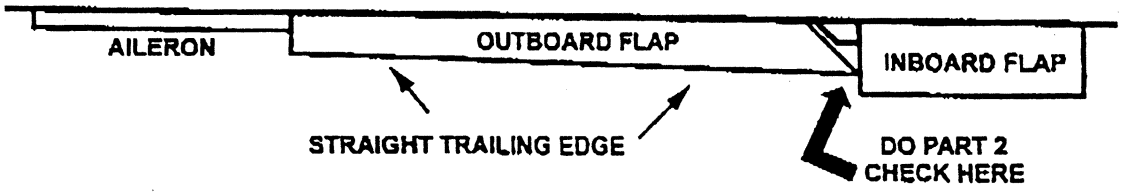
BILLING CODE 4910–13–P

NORMAL/ABNORMAL OUTBOARD FLAP CONFIGURATION IN TAKE-OFF POSITION

Note: View looking forward on left wing trailing edge (right side opposite).

1. NORMAL

A normal outboard flap has a straight trailing edge, and the inboard corner is slightly above (i.e. higher) than the inboard flap.



2. ABNORMAL

The following are indications of an outboard flap with a twist, skew or abnormal deformation:

- **Noticeable curve in the trailing edge**
- **Buckled top or bottom surface**
- **Higher than normal position of the inboard trailing edge corner**

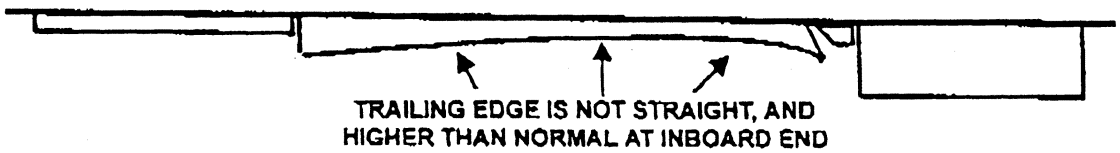


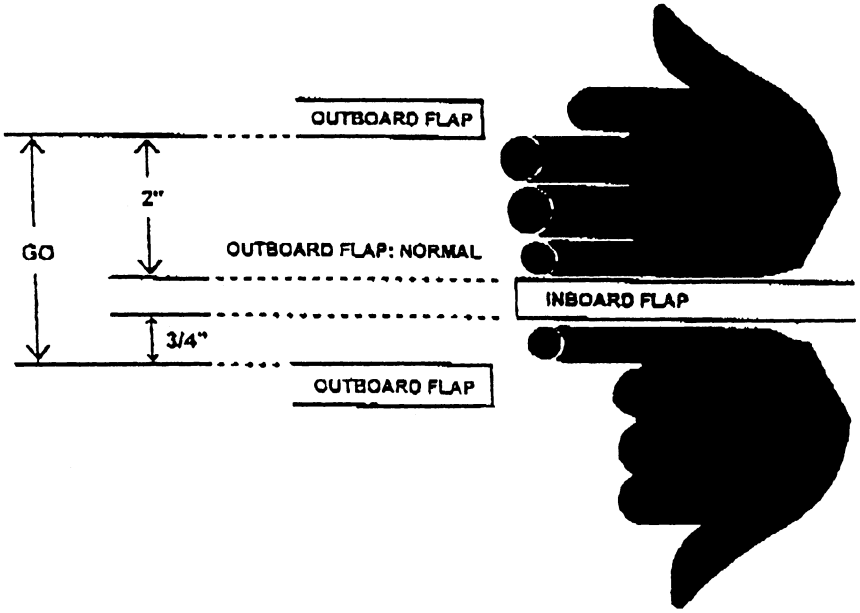
Figure 1. Normal/Abnormal Outboard flap Configuration in Take-off Position''

OUTBOARD FLAP GO/NO-GO CRITERIA IN TAKE-OFF POSITION

NOTE 1. These criteria are applicable for any size of hand.
2. View looking forward on left wing trailing edge (right side opposite).

If the outboard flap position is outside the "GO" range as shown below further flight is prohibited.

1. FLAPS AT 8 DEGREES



2. FLAPS AT 20 DEGREES

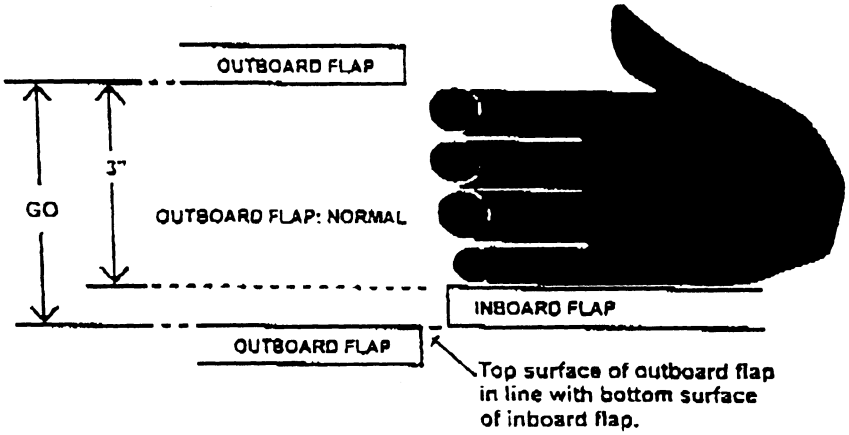


Figure 2. Outboard Flap Go/No-Go Criteria in Take-off Position"

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(g) Within 10 days after October 2, 1998, revise the FAA-approved maintenance program to include the following procedures and Figures 1 and 2 of this AD:

''Maintenance Procedure

Whenever a 'FLAPS FAIL' caution message occurs, carry out the following procedures after landing:

Note: These procedures are to be accomplished by maintenance personnel only.

1. Check that there have been no other 'FLAPS FAIL' caution messages reported within the previous 72 hours. If a previous message has been reported, prior to further flight, perform the actions required in the following Maintenance Action section. If no previous 'FLAPS FAIL' caution message has been reported, continue with the following:

2. Carry out an external visual check of each outboard flap for evidence of twisting, skewing, or abnormal deformation. (Reference Figures 1 and 2.)

3. If there is no evidence of twisting, skewing, or abnormal deformation, proceed as follows:

(a) Reset the flap system ONLY ONCE by cycling circuit breakers CB1–F4 and CB2–F4.

(b) If the system does not reset (*i.e.*, the 'FLAPS FAIL' caution message is still posted), prior to further flight, perform the actions required in the following Maintenance Action section.

(c) If the system resets, cycle the flaps to 45 degrees and back to 0 degrees. Continued flap operation for up to a maximum of 72 hours is then permitted as long as no additional 'FLAPS FAIL' caution message is indicated.

(d) If an additional 'FLAPS FAIL' caution message occurs within the period of 72 hours, as specified above, prior to further flight, perform the actions required in the following Maintenance Action section.

(e) Within 72 hours, even if no further 'FLAPS FAIL' messages have been indicated, perform the actions required in the following Maintenance Action section.

4. If there is evidence of twisting, skewing, or abnormal deformation, PRIOR TO FURTHER FLIGHT, perform the actions required in the following Maintenance Action section.

Maintenance Action

Whenever the outboard flap position indicator is outside the 'GO' range as shown in Figure 2, or whenever directed to do so by the Maintenance Procedure above, perform the following procedures:

A. Interrogate the flap electronic control unit (FECU) per Fault Isolation Manual, Section 27–50–00, 'Flaps Fault Isolation,' and rectify as applicable.

B. Visually check each flap for evidence of twisting, skewing, or abnormal deformation.

1. If there is no evidence of twisting, skewing, or abnormal deformation, manually isolate any jammed, disconnected, or dragging component; and rectify all discrepant conditions.

2. If there is evidence of twisting, skewing, or abnormal deformation, replace both actuators and any discrepant flap panel with new or serviceable components. In addition, inspect flexible shaft(s) inboard of the most outboard actuator removed for discrepancies, and replace any discrepant flexible shaft with a new or serviceable flexible shaft.

Note: An acceptable procedure for testing the flap drive breakaway input torque is detailed in Aircraft Maintenance Manual Temporary Revision 27–203, Task 27–53–00–750–802, dated July 17, 1998.

C. Within 3 days after identifying a flap panel twist or logging a 'FLAPS FAIL' caution message, notify Bombardier Aerospace, via the Canadair Regional Jet Action Center, of all findings and actions taken.''

New Requirements of the AD

Install New Flap Actuators

(h) Within 12 months after the effective date of this AD: Install new Number 3 and Number 4 flap actuators in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–114, Revision B, dated December 4, 2003. The actions in paragraph (h) of this AD must be accomplished prior to or concurrently with the actions in paragraph (i) of this AD.

Install Skew Detection System (SDS) and Air Data Computer

(i) Within 30 months after the effective date of this AD, but after the actions required by paragraph (h) of this AD have been accomplished: install the SDS in accordance with paragraphs (i)(1), (i)(2), (i)(3), (i)(4), and (i)(5) of this AD. These actions must be accomplished in the order stated in this paragraph. Accomplishing the actions in paragraphs (h) and (i) of this AD terminates the requirements of paragraphs (f) and (g) of this AD, and the AFM revisions required by those paragraphs may be removed from the AFM.

(1) Install the electrical provisions for the SDS in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–115, Revision D, dated March 18, 2004.

(2) Install and activate the SDS in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–116, Revision B, dated February 2, 2004; and install a new or retrofitted air data computer (ADC) in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–128, Revision B, dated September 7, 2001.

(3) Install new airspeed limitation placards in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–11–080, dated November 28, 2003.

(4) Revise the Limitations section of the AFM to include the information specified in Canadair Temporary Revision (TR) RJ/128, dated November 28, 2003, to Canadair Regional Jet AFM, CSP A–102, to include revised V_{FE} values, and a new SDS and crosswind-related limitation for take-off flap selection.

Note 2: The action in paragraph (i)(4) of this AD may be accomplished by inserting a copy of Canadair TR RJ/128 in the AFM. When this temporary revision has been incorporated into the general revisions of the AFM, the general revisions may be inserted in the AFM, provided the information contained in the general revision is identical to that specified in Canadair Temporary Revision RJ/128.

(5) For airplanes on which decals stating ''Visually inspect flaps prior to departure'' have been installed in production or in accordance with an alternative method of compliance (AMOC) granted by the FAA: After the installation required by paragraph (h)(1), (i)(1), (i)(2), (i)(3), and (i)(4) of this AD, remove the decals in accordance with Part A of Bombardier Service Bulletin 601R–27–111, dated March 6, 2000.

Note 3: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an AMOC according to paragraph (1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Actions Accomplished in Accordance With Previous Revisions of Service Bulletins

(j) Actions accomplished before the effective date of this AD according to the service bulletins identified in paragraphs (j)(1) and (j)(2) of this AD, are considered acceptable for compliance with the corresponding action specified in paragraphs (h) and (i) of this AD.

(1) For the action in paragraph (h) of this AD: Bombardier Service Bulletin 601R–27–114, dated March 22, 2002; or Revision A, dated November 6, 2002.

(2) For the actions in paragraph (i) of this AD: Bombardier Service Bulletin 601R–27–116, dated July 23, 2003; or Revision A, dated September 10, 2003.

Parts Installation

(k)(1) As of 12 months after the effective date of this AD, no person may install on any airplane a flap actuator with part numbers (P/Ns) 601R93103–5, –6, –7, –8, –9, –10, –11, –12, –17, and –18 (Vendor P/Ns 853D100 –7, –8, –9, –10, –11, –12, –13, –14, –17 and –18).

(2) As of 12 months after the effective date of this AD, no person may install on any airplane a flap actuator with P/Ns 601R93104–5, –6, –7, –8, –9 and –10 (Vendor P/Ns 854D100–7, –8, –9, –10, –11 and –12).

(3) As of 30 months after the effective date of this AD, no person may install on any airplane an ADC with P/Ns 822–0372–140 and –143.

AMOCs

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

(2) AMOCs approved previously according to AD 98–20–01, are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) Canadian airworthiness directive CF–1998–14R4, dated June 1, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on September 8, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18794 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22471; Directorate Identifier 2005–NM–142–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 757 airplanes. This proposed AD would require repetitive measurements of the freeplay of each of the three power control units (PCUs) that move the rudder; repetitive lubrication of rudder components; and corrective actions if necessary. This proposed AD results from a report of freeplay-induced vibration of the rudder. We are proposing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by November 7, 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: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22471; Directorate Identifier 2005–NM–142–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review 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 a report of freeplay-induced flutter of the rudder during flight on a Boeing Model 757–200 series airplane. Excessive corrosion and wear of components and/or interfaces allows excessive freeplay movement of the control surfaces and can cause excessive vibration of the airframe during flight. The point of transition from vibration to divergent flutter is unknown. When divergent flutter occurs, the amplitude of each cycle or oscillation is larger than the last one and the surface can quickly reach its structural limits. This condition, if not corrected, could result in loss of control of the airplane.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 757–27–0148, dated June 16, 2005 (for Model 757–200, –200CB, and –200PF series airplanes); and Boeing Special Attention Service Bulletin 757–27–0149, dated June 16, 2005 (for Model 757–300 series airplanes). The service bulletins describe procedures for measuring the freeplay for each of the three power control units (PCUs) that move the rudder. If the freeplay exceeds certain specified limits, the service bulletins describe procedures for doing applicable related investigative and corrective actions. These related investigative and corrective actions include doing a general visual inspection for wear of the affected components such as the rudder hinges, reaction link, reaction link bearings, hanger link, rod end bearings, and rudder hinge bolts, bearings, and bushings; and repairing or replacing the affected part if necessary. The corrective actions also include repeating the freeplay measurement and any related investigative and corrective actions until the maximum rudder freeplay is within acceptable limits. The service bulletins also describe procedures for repetitive lubrication of the rudder hinge, rudder PCU bearings, PCU reaction links, hanger links, and rod end bearings. The service bulletins note that if the freeplay measurement and a lubrication cycle are due at the same time, the freeplay measurement must be satisfactory before the lubrication is done. 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.

Costs of Compliance

There are about 1,040 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. No parts are necessary to accomplish either action.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour ($)	Cost per airplane ($)	Number of U.S.- registered airplanes	Fleet cost ($)
Freeplay measurement	4	65	260, per measurement cycle	679	176,540, per measurement cycle.
Lubrication	8	65	520, per lubrication cycle	679	353,080, per lubrication cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–22471; Directorate Identifier 2005–NM–142–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from a report of freeplay-induced vibration of the rudder. We are issuing this AD to prevent excessive vibration of the airframe during flight, which could result in divergent flutter and loss of control of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable:

(1) For Model 757–200, –200PF, –200CB series airplanes: Boeing Special Attention Service Bulletin 757–27–0148, dated June 16, 2005; and

(2) For Model 757–300 series airplanes: Boeing Special Attention Service Bulletin 757–27–0149, dated June 16, 2005.

Repetitive Measurements

(g) Within 18 months after the effective date of this AD: Measure the freeplay for each of the three power control units that move the rudder. Repeat the measurement thereafter at intervals not to exceed 12,000 flight hours or 36 months, whichever occurs first. Do all actions required by this paragraph in accordance with the applicable service bulletin.

Related Investigative and Corrective Actions

(h) If any measurement found in paragraph (g) of this AD is outside certain limits specified in the service bulletin, before further flight: Do the applicable related investigative and corrective actions in accordance with the service bulletin.

Repetitive Lubrication

(i) Within 9 months after the effective date of this AD: Lubricate the rudder components specified in the applicable service bulletin. Repeat the lubrication thereafter at the applicable interval in paragraph (i)(1) or (i)(2) of this AD. Do all actions required by this paragraph in accordance with the applicable service bulletin.

(1) For airplanes on which BMS 3–33 grease is not used: 3,000 flight hours or 9 months, whichever occurs first.

(2) For airplanes on which BMS 3–33 grease is used: 6,000 flight hours or 18 months, whichever occurs first.

Concurrent Repetitive Cycles

(j) If a freeplay measurement required by paragraph (g) of this AD and a lubrication cycle required by paragraph (i) of this AD are due at the same time or will be accomplished during the same maintenance visit, the freeplay measurement and applicable related investigative and corrective actions must be done before the lubrication is accomplished.

Alternative Methods of Compliance (AMOCs)

(k)(1) 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.

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

Issued in Renton, Washington, on September 7, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18795 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22488; Directorate Identifier 2005–NM–151–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 revise an existing airworthiness directive (AD) that applies to certain Boeing Model 767–200 and –300 series airplanes. The existing AD currently requires repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, and replacement of any discrepant component with a new component. This proposed AD would revise the applicability of the existing AD to refer to a later revision of the referenced service bulletin, which removes airplanes that are not subject to the identified unsafe condition. This proposed AD results from reports of worn and damaged door latches and disconnect housings in the off-wing escape slide compartments. We are proposing this AD to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew. We are also proposing this AD to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel.

DATES: We must receive comments on this proposed AD by November 7, 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, PO Box 3707, Seattle, Washington 98124–2207, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Susan Rosanske, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6448; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include docket number ''Docket No. FAA–2005–22488; Directorate Identifier 2005–NM–151–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

On June 1, 2000, we issued AD 2000–11–19, amendment 39–11767 (65 FR 37015, June 13, 2000), for certain Boeing Model 767–200 and –300 series airplanes. That AD requires repetitive inspections to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, and replacement of any discrepant component with a new component. That AD resulted from reports of worn and damaged door latches and disconnect housings in the off-wing escape slide compartments. We issued that AD to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew. We also issued that AD to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel.

Actions Since Existing AD Was Issued

Since we issued AD 2000–11–19, we have reviewed Boeing Service Bulletin 767–25A0260, Revision 1, dated January 25, 2001; Revision 2, dated August 26, 2004; and Revision 3, dated July 7, 2005 (AD 2000–11–19 refers to the original issue of the service bulletin as the appropriate source of service information for accomplishing the required actions). The inspections and corrective actions specified in Revisions 1 through 3 are identical to those in the original issue of the service bulletin.

Revision 1 changes the listing of affected airplane operators. Revision 2 revises the effectivity to exclude airplanes having line numbers 921 and subsequent on which the new off-wing slide has been incorporated during production. Revision 3 removes 14 airplanes from the effectivity, because the airplanes do not have off-wing escape slides. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Therefore, we have determined that the airplanes deleted from the effectivity of the referenced service bulletin are not subject to the identified unsafe condition specified in AD 2000–11–19, and that the applicability of that AD needs to be revised.

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 revise AD 2000–11–19 and would retain the requirements of the existing AD. This proposed AD would also revise the applicability of the existing AD to refer to a later revision of the referenced service bulletin, which removes airplanes that are not subject to the identified unsafe condition.

Change to Existing AD

This proposed AD would retain all requirements of AD 2000–11–19. Since AD 2000–11–19 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–11–19	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (h).

We also have changed all references to a ''detailed visual inspection'' in the existing AD to ''detailed inspection'' in this action.

Costs of Compliance

There are about 694 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 315 airplanes of U.S. registry.

The inspections that are required by AD 2000–11–19 and retained in this proposed AD take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required inspections is $61,425, or $195 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and place it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–11767 (65 FR 37015, June 13, 2000) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2005–22488; Directorate Identifier 2005–NM–151–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) This AD revises AD 2000–11–19.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–25A0260, Revision 3, dated July 7, 2005; excluding those airplanes that have been converted from a passenger to freighter configuration, and on which the off-wing escape system has been removed or deactivated.

Unsafe Condition

(d) This AD results from reports of worn and damaged door latches and disconnect housings in the off-wing escape slide compartments. We are issuing this AD to ensure deployment of an escape slide during an emergency evacuation. Non-deployment of an escape slide during an emergency could slow down the evacuation of the airplane and result in injury to passengers or flightcrew. We are also issuing this AD to detect damaged disconnect housings in the off-wing escape slide compartments, which could result in unexpected deployment of an escape slide during maintenance, and consequent injury to maintenance personnel.

Compliance

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

Requirements of AD 2000–11–19

Inspections

(f) Prior to the accumulation of 6,000 total flight hours, or within 18 months after July 18, 2000 (the effective date of AD 2000–11–19), whichever occurs later, perform a detailed inspection to detect wear or damage of the door latches and disconnect housings in the off-wing escape slide compartments, in accordance with Boeing Alert Service

Bulletin 767–25A0260, dated July 9, 1998. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 18 months, whichever occurs later.

Note 1: Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998, allows repetitive inspections of a door latch having part number H2052–11 or H2052–115, provided that the latch is not worn or damaged. However, replacement of any latch having part number H2052–11 or H2052–115 with a new latch having part number H2052–13 is described as part of a modification of the escape slide compartment door latching mechanism that is specified in Boeing Alert Service Bulletin 767–25A0174, dated August 15, 1991. Accomplishment of that modification is required by AD 92–16–17, amendment 39–8327, and AD 95–08–11, amendment 39–9200. Therefore, operators should note that any latch having part number H2052–11 or H2052–115 found during an inspection required by paragraph (f) of this AD is already required to be replaced in accordance with AD 92–16–17 or AD 95–08–11, as applicable.

(g) Inspections and corrective actions accomplished prior to July 18, 2000, in accordance with the Validation Copy of Boeing Alert Service Bulletin 767–25A0260, dated April 28, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Replacement

(h) If any part is found to be worn or damaged during the inspections performed in accordance with paragraph (f) of this AD, prior to further flight, replace the worn or damaged part with a new part, and perform an adjustment of the off-wing escape slide system, in accordance with Boeing Alert Service Bulletin 767–25A0260, dated July 9, 1998.

New Optional Actions

Compliance With Revisions 1 Through 3 of Referenced Service Bulletin

(i) Inspections and applicable corrective actions done after the effective date of this AD in accordance with Boeing Service Bulletin 767–25A0260, Revision 1, dated January 25, 2001; Revision 2, dated August 26, 2004; or Revision 3, dated July 7, 2005; are acceptable for compliance with the corresponding requirements 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 September 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18796 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22399; Airspace Docket No. 05–AAL–27]

RIN 2120–AA66

Proposed Modification of the Norton Sound Low Offshore Airspace Area; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Norton Sound Low airspace area, AK. Specifically, this action proposes to modify the Norton Sound Low airspace area in the vicinity of the Deering Airport, AK, by lowering the controlled airspace floor to 1,200 feet mean sea level (MSL) and expanding the area to a 45-nautical mile (NM) radius of the airport. The FAA is proposing this action to provide additional controlled airspace for aircraft instrument operations at the Deering Airport.

DATES: Comments must be received on or before November 7, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify FAA Docket No. FAA–2005–22399 and Airspace Docket No. 05–AAL–27, at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22399 and Airspace Docket No. 05-AAL–27) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2005–22399 and Airspace Docket No. 05–AAL–27.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov*, or the Federal Register's web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue #14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low airspace area, AK by

lowering the floor to 1,200 feet MSL within a 45 NM radius of Deering Airport, AK. The purpose of this proposal is to establish controlled airspace to support instrument flight rules operations at Deering Airport, AK. The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new instrument approach procedures for the Deering Airport. New controlled airspace extending upward from 1,200 feet MSL above the surface in international airspace would be created by this action. The proposed airspace is sufficient to support instrument operations at the Deering airport.

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of System Operations Airspace and AIM, Airspace & Rules, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

Paragraph 6007 Offshore Airspace Areas

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 1,200 MSL within a 45-mile radius of the Deering Airport Alaska, and airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 59°59′57″ N., long. 168°00′08″ W.; to lat. 62°35′00″ N., long. 175°00′00″ W.; to lat. 65°00′00″ N., long. 168°58′23″ W.; to lat. 68°00′00″ N., long. 168°58′23″ W.; to a point 12 miles offshore at lat. 68°00′00″ N.; thence by a line 12 miles from and parallel to the shoreline to lat. 56°42′59″ N., long. 160°00′00″ W.; to lat. 58°06′57″ N., long. 160°00′00″ W.; to lat. 57°45′57″ N., long. 161°46′08″ W.; to the point of beginning, excluding that portion that lies within Class E airspace above 14,500 feet MSL, Federal airways and the Nome and Kotzebue, AK, Class E airspace areas.

* * * * *

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

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–18812 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0344; FRL–7719–7]

C8, C10, and C12 Straight-Chain Fatty Acid Monoesters of Glycerol and Propylene Glycol; Amendment to Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend an exemption from the requirement of a tolerance for residues of the C8, C10, and C12 straight- chain fatty acid monoesters of glycerol and propylene glycol on all food commodities when applied/used for both pre-harvest and post-harvest purposes. On June 23, 2004, EPA established an exemption from the requirement of a tolerance for these residues but did not expressly approve post-harvest uses in accordance with 40 CFR 180.1(i). Therefore, EPA is proposing this regulation, to amend the existing tolerance exemption to allow for post-harvest uses of C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: Comments, identified by docket ID number OPP–2004–0344, must be received on or before October 6, 2005.

ADDRESSES: Submit your comments, identified by docket ID number OPP–2004–0344, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-

line instructions for submitting comments.

• *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

• *E-mail*: Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2004–0344.

• *Mail*: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0344.

• *Hand delivery*: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0344. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2004–0344. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket/*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; fax number: (703) 308–7026; e-mail address: *frazer.carol@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 code 111)

• Pesticide manufacturing (NAICS code 32532)

• Animal production (NAICS code 112)

• Food manufacturing (NAICS code 311)

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 Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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

1. *Submitting CBI*. Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

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

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

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

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

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

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

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

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA on its own initiative, pursuant to section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to amend 40 CFR part 180 by adding post-harvest uses to the language in 40 CFR 180.1250. In the **Federal Register** of June 23, 2004 (69 FR 34937) (FRL–7352–6), EPA issued a final rule pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), establishing an exemption from the requirement of a tolerance for residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol after reviewing a petition for a tolerance exemption (PP 1F6314) submitted by 3M Corporation, 3M Center, St. Paul MN 55144–1000.

The Notice of Filing of a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food (66 FR 64251, December 12, 2001) (FRL–6809–8) failed to notify the public that the C8, C10, and C12 straight-chain fatty acid monoesters would be used for post-harvest applications ''to control spoilage of food and feed crops after harvest.'' Even though the first page of 3M's petition for a tolerance exemption stated that its proposed end use products, which contain the fatty acid monoesters that are the subject of this tolerance rule amendment, were to be used for the ''treatment of potatoes after harvest to prevent spoilage in storage,'' the summary of the petition that was published in the **Federal Register** Notice did not specifically mention the post-harvest use. Under 40 CFR 180.1(i), ''[u]nless otherwise specified, tolerances and exemptions established under the regulations in this part apply to residues from only pre-harvest application of this chemical.''

In the preamble to the June 23, 2004 rule establishing the exemption for these monoesters (69 FR 34937) (Unit IV.A.1, Aggregate Exposures), EPA relies upon the aggregate dietary exposure estimates generated by 3M using EPA's Dietary Exposure Potential Model. Although not expressly stated in that rule, those residue estimates included post-harvest exposures. In order to simulate a worst-case exposure analysis, 18 different raw agricultural commodities from seeds for sprouts to leafy vegetables like spinach to solid produce like apple and potato were obtained from local supermarkets in St. Paul, Minnesota and soaked in a typical diluted treatment solution for 15 minutes to provide an idea about post-harvest residues on agricultural commodities. As can be seen from this, the Agency's evaluation of residue levels of these chemicals' pesticide usage included both the extant residues resulting from pre-harvest applications and the residues resulting from the proposed post-harvest use.

Even if the exposure resulting from post-harvest use was significantly higher than exposure based on only pre-harvest use of monoesters as pesticides, the Agency is not concerned due to the low to non-existent toxicity level of these fatty acids. The preamble to the June 23, 2004 rule (69 FR 34937) discusses the long history of consumption by humans of fatty acids and their monoesters in food and the Agency knows of no instance where these have been associated with any toxic effects related to the consumption of the food. Due to this knowledge of fatty acid monoesters' presence and function in the human system and the acute testing, EPA believes the fatty acid monoesters are unlikely to be carcinogenic or have other long-term toxic effects. The data from the residue information, the toxicity studies, and the additional information from the scientific literature submitted by the registrant are sufficient to demonstrate that no substantial risks to human health are expected from the use of glycerol or propylene glycol fatty acid monoesters, even when used on crops post-harvest, when used in accordance with good agricultural practices and in accordance with all relevant labeling.

B. What is the Agency's Authority for Taking this Action?

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

Section 408(c)(1)(B) of the FFDCA allows EPA to modify a regulation on its own initiative under section 408(e). Section 408(e) requires EPA to issue a notice of proposed rulemaking and provide a public comment period of not less than 60 days. However, this provision also allows EPA to shorten the comment period if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking. For this particular rule, EPA has shortened the public comment period to 15 days because the Agency believes that it is in the public interest to do so. The first end-use product using one of these pesticide active ingredients has been approved, and growers face a potential hardship if a decision is not made expeditiously.

EPA on its own initiative, under section 408(e) of the FFDCA, 21 U.S.C. 346a(e), is proposing to amend 40 CFR 180.1250.

III. Statutory and Executive Order Reviews

This proposed rule amends an exemption from the tolerance requirement under section 408(e) of the FFDCA, as an action taken on the Agency's own initiative to correct an oversight in establishing the current tolerance exemption for the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol to allow for both pre-harvest and post-harvest uses. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any

unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impact of this proposed rule on small entities, the Agency hereby certifies that this proposed rule will not have significant negative economic impact on a substantial number of small entities. Establishing an exemption from the requirement of a pesticide tolerance (or, amending a tolerance exemption, as is proposed), is in effect, the removal of a regulatory restriction on pesticide residues in food and thus such an action will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule. The Agency hereby certifies that this proposed action will not have significant negative economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 7, 2005.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. By revising § 180.1250 to read as follows:

§ 180.1250 C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol; exemption from the requirement of a tolerance.

The C8, C10, and C12 straight-chain fatty acid monoesters of glycerol (glycerol monocaprylate, glycerol monocaprate, and glycerol monolaurate) and propylene glycol (propylene glycol monocaprylate, propylene glycol monocaprate, and propylene glycol monolaurate) are exempt from the requirement of a tolerance in or on all food commodities when used for both pre-harvest and post-harvest purposes, in accordance with approved label rates and good agricultural practice.

[FR Doc. 05–18724 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7971–4]

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

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent to partially delete the East Tailing portion of the Tar Lake Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency, (EPA) Region 5 is issuing a notice of intent to partially delete the East Tailing Area of the Tar Lake Superfund Site (Site) located in Antrim County, Michigan, from the National Priorities List (NPL) and requests public comments on this notice of intent to partially delete. The East Tailing Area, as defined in the Remedial Investigation Report dated August 7, 2000, includes all soil, subsurface soil and groundwater associated with that part of the Tar Lake Superfund Site. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Michigan, through the Michigan Department of Environmental Quality, have determined that all appropriate response actions under CERCLA have been completed.

However, this partial deletion does not preclude future actions under Superfund. In the ''Rules and Regulations'' Section of today's **Federal Register,** we are publishing a direct final notice of partial deletion of the East Tailing Area of the Tar Lake Superfund Site without prior notice of intent to partially delete because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final notice of partial deletion. If we receive no adverse comment(s) on the direct final notice of partial deletion, we will not take further action. If we receive timely adverse comment(s), we will withdraw the direct final notice of partial deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final partial deletion notice based on adverse comments received on this notice of intent to partially delete. We will not institute a second comment period on this notice of intent to partially delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of partial deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by October 21, 2005.

ADDRESSES: Written comments should be addressed to: Stuart Hill, Community Involvement Coordinator, U.S. EPA (P–19J), 77 W. Jackson, Chicago, IL 60604, 312–886–0689 or 1–800–621–8431. Electronic comments should be sent to *bloom.thomas@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas Bloom, Remedial Project Manager at (312) 886–1967, or Gladys Beard, State NPL Deletion Process Manager at (312) 886–7253 or 1–800–621–8431, Superfund Division, U.S. EPA (SR–6J), 77 W. Jackson, IL 60604.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register.**

Information Repositories: Repositories have been established to provide detailed information concerning this decision at the following address: EPA Region 5 Library, 77 W. Jackson, Chicago, IL 60604, (312) 353–5821, Monday through Friday 8 a.m. to 4 p.m.; Mancelona Public Library, 202 W. State Street, Mancelona, MI 49945, (231) 587–9471, Monday through Friday 8 a.m. to 4 p.m., Tuesday and Thursday 6 p.m to 8 p.m.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: September 6, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–18835 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 70, No. 182
Wednesday, September 21, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Trapper Bunkhouse Land Stewardship Project, Darby Ranger District, Bitterroot National Forest in Ravalli County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, Bitterroot National Forest, will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed Trapper Land Stewardship Project. The project area is located in Ravalli County, west of Darby, Montana. The project analysis area encompasses approximately 34,300 acres between the Trapper Creek and Bunkhouse Creek drainages of the Bitterroot River watershed. The proposed project would manage vegetation to address urban interface needs, insect and disease infestations, dead and dying vegetation; travel systems will also be evaluated to reduce sedimentation, restore aquatic passage and provide managed recreation opportunities including ATV and motorcycle travel loops. Site-specific Bitterroot Forest Plan amendments are proposed for: snag standards, Forest Wide Elk Habitat Effectiveness (EHE) standards, and-Forest-wide thermal cover standards. Approximately 6000 acres between Trapper and Bunkhouse drainages of the Bitterroot River watershed are proposed for vegetation treatments. We will also be working with scientists from the Rocky Mountain Research Station and the Leopold Wilderness Institute to provide opportunities to evaluate our ability to influence fire spread with vegetation management and the effects of our management on the ecosystem.

Public Involvement: The public is invited to comment on the Proposed Action or meet with Chuck Oliver at any point in time during the 30-day comment period beginning on the date of the publication of the Notice of Intent in the **Federal Register**. Contact Chuck Oliver at (406) 821–3913 or e-mail *coliver01@fs.fed.us* to schedule a meeting. To get on the mailing list contact Elizabeth Ballard (406) 777–5461, or email *eballard@fs.fed.us*.

DATES: Initial comments concerning the proposed action and the scope of analysis should be received in writing, no later than 30 days from the publication of this notice of intent.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail—Trapper Bunkhouse BEMRP Project; Chuck Oliver, District Ranger; Darby Ranger Station; 712 N. Main; Darby, Montana 59829 (2) phone—(406) 821–3913; (3) e-mail—*comments-northern-bitterroot-darby@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Elizabeth Ballard, Acting North Zone Interdisciplinary Team Leader, Stevensville Ranger District, Bitterroot National Forest, 88 Main St. Stevensville, MT, 59870, phone (406) 777–5461, or e-mail *eballard@fs.fed.us*.

Responsible Official: David T. Bull, Forest Supervisor, Bitterroot National Forest, Hamilton, MT 59807.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Trapper Bunkhouse Project is proposed to respond to the goals and objectives of the Bitterroot Community Wildfire Protection Plan and the Bitterroot National Forest Land and Resource Management Plan.

The purpose and need objectives of the proposed Trapper Bunkhouse project are to Reduce the probability for uncharacteristically large, high-intensity wildlife fires within historic low intensity, frequently fire regime areas on the landscape and especially in the urban interface.

Provide economic value to the community and provide funding opportunities for other projects related to watershed, soil restoration and fuel reduction by capturing economic value of beetle killed and infested trees as well as green tree thinning.

Provide motorized recreation opportunities (firewood, ATV's and motorcycle, driving) while protecting resources such as soils, sensitive species, and water resources. Improve watershed and aquatic conditions.

In addition, this project provide an opportunity to conduct research to evaluate our ability to influence fire spread with vegetation management and the effects of our management on the ecosystem.

Proposed Action

The proposed action is designed to reduce potential impacts and to accomplish the project objectives. The types of vegetation management treatments that may be implemented on the landscape to meet the objectives include, but are not limited to: Salvage of dead and dying trees; green tree removals such as commercial and non-commercial thinning (including removal of insect and disease infested trees); slashing, hand piling, prescribed burning, herbicide application for noxious weeds, and sporax application of Ponderosa Pine stumps to prevent spread of annosus root diseases. The total proposed vegetation treatment acres is approximately 6000.

Approximately 250 acres of proposed research treatment are planned to be included within these treatment areas. Research treatment options include: Mechanical or hand thin ladder fuel trees and large competing trees to different levels, or prescribed burn only. Thinning treatments include the following associated treatments: (a) Fuel reduction by mechanical removal, pile and burn, or prescribed burn; (b) skid trails treated with mulch or slash mats or left untreated; (c) treating pile burn microsite with mulch and/or unburned soil or left untreated.

The types of access management treatments that may be implemented on the landscape to meet the objectives include, but are not limited to: Road reconstruction for timber harvest purposes, closing or obliterating un-needed roads or routes, construction of trails, changing access through restrictions or road closures, culvert replacement or removal, and development of parking areas. Approximately 1–2 miles of new trail construction may be necessary to connect existing routes to one another. Approximately 2–3 miles of new trail construction may be necessary on existing road prisms. Approximately 2–3 miles of unauthorized routes would be rehabilitated and closed. Approximately 4–33 road crossings would be modified.

Parking areas in 2 to 3 areas would be established or modified.

Possible Alternatives

Preliminary alternatives which have been identified include the proposed action and the no action alternatives.

Responsible Official

David T. Bull, Forest Supervisor, Bitterroot National Forest, 1801 N. First, Hamilton, MT 59840.

Nature of Decision To Be Made

The Responsible Official will determine whether or not to proceed with the proposed project activities.

Scoping Process

Comments will be accepted during the 30-day scoping period as described in this notice of intent. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties. Contact Chuck Oliver, Darby District Ranger at the address listed in this notice of intent if you would like to receive a copy. An open house in Darby, Montana is planned on October 12, 2005 in Darby, Montana. This will be an opportunity for you to interact with team members to clarify the proposed project.

Preliminary Issues

Impacts to the viewshed from the town of Darby.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

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

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day-comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Additional public comment will be accepted after publication of the DEIS anticipated early in 2006. The Environmental Protection Agency will publish the Notice of Availability of the Draft Environmental Impact Statement in the **Federal Register**. The Forest will also publish a legal notice of availability in the Ravalli Republic, Hamilton, Montana. The comment period on the Draft EIS will begin the day after the legal notice is published. The Final EIS and Decision are expected late in 2006.

Dated: September 15, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–18792 Filed 9–20–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–588–804, A–559–801)

Extension of Time Limits for Preliminary Results and Final Results of the Full Sunset Review of the Antidumping Duty Orders on Ball Bearings and Parts Thereof from Japan and Singapore

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

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Zev Primor at 202–482–4114 or Fred W. Aziz at 202–482–4023, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Extension of Time Limits

In accordance with section 751(c)(5)(B) of the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (the Department) may extend the period of time for making its determination by not more than 90 days, if it determines that the sunset review is extraordinarily complicated. As set forth in 751(c)(5)(C)(v) of the Act, the Department may treat a sunset review as extraordinarily complicated if it is a review of a transition order. The sunset reviews subject to this notice are transition orders. Therefore, the Department has determined, pursuant to section 751(c)(5)(C)(v) of the Act, that these sunset reviews are extraordinarily complicated and require additional time for the Department to complete its analysis.

The Department's preliminary results of these full sunset reviews were scheduled for September 19, 2005, and the final results were scheduled for January 27, 2006. They are now being extended until December 19, 2005, and April 27, 2006, respectively. These dates are 90 days from the original scheduled dates of the preliminary and final results of these sunset reviews.

This notice is issued in accordance with sections 751(c)(5)(B) and (C)(v) of the Act.

Dated: September 15, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–18852 Filed 9–20–05; 8:45 am]

(BILLING CODE: 3510–DS–SP)

DEPARTMENT OF COMMERCE

International Trade Administration

(A–489–501)

Certain Welded Carbon Steel Pipe and Tube from Turkey: Extension of Final Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2004, the Department initiated an administrative review of the antidumping duty order on certain welded carbon steel pipe and tube from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 39409. On November 1, 2004, the Department fully extended the preliminary results of the aforementioned review by 120 days. *See Certain Welded Carbon Steel Pipe and Tube From Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 69 FR 63366. On June 7, 2005, the Department published the preliminary results of its review. *See Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 70 FR 33084. The final results are currently due no later than October 5, 2005.

Extension of Time Limits for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department of Commerce (''the Department'') to issue (1) the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested, and (2) the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

We determine that it is not practicable to complete the final results of this review within the original time limit because the Department needs additional time to fully consider parties' arguments regarding the proposed modifications to the computation of duty drawback.

Therefore, we are extending the deadline for the final results of the above–referenced review by 60 days, until December 4, 2005. However, December 4, 2005, falls on Sunday, 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 final results is December 5, 2005.

Dated: September 15, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 05–18851 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; International Dolphin Conservation Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 21, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Cathy E. Campbell, 562–980–4060 or *cathy.e.campbell@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration (NOAA) collects information to implement the International Dolphin Conservation Program Act. The Act allows entry of yellowfin tuna into the United States, under specific conditions, from nations in the Program that would otherwise be under embargo. The Act also allows U.S. fishing vessels to participate in the yellowfin tuna fishery in the eastern tropical Pacific Ocean on terms equivalent with the vessels of other nations.

The regulations implementing the Act are at 50 CFR part 229. The recordkeeping and reporting requirements at 50 CFR part 229 form the basis for this collection of information. Through this collection of information, NOAA is able to track and verify ''dolphin safe'' and ''non-dolphin safe'' tuna products from catch through the U.S. market.

II. Method of Collection

Paper applications, other paper records, electronic and facsimile reports, and telephone calls are required from participants, and methods of submittal include e-mail and facsimile transmission of paper forms.

III. Data

OMB Number: 0648–0387.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; and Individuals or households.

Estimated Number of Respondents: 38.

Estimated Time Per Response: 30 minutes for a vessel permit application; 10 minutes for an operator permit application; 30 minutes for a request for a waiver to transit the eastern tropical Pacific Ocean without a permit (and subsequent radio reporting); 10 minutes for a notification of vessel departure; 10 minutes for a change in permit operator; 10 minutes for notification of a net modification; 10 hours for an experimental fishing operation waiver;

15 minutes for a request for a Dolphin Mortality Limit; 10 minutes for notification of vessel arrival; 60 minutes for a tuna tracking form; 10 minutes for a monthly tuna storage removal report; 60 minutes for a monthly tuna receiving report; and 30 minutes for a special report documenting the origin of tuna (if requested by the NOAA Administrator).

Estimated Total Annual Burden Hours: 135.

Estimated Total Annual Cost to Public: $519.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 15, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18769 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Northeast Fisheries Observer Program Fishermen's Comment Card

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before November 21, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy S. Van Atten, (508) 495–2266 or *Amy.Van.Atten@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) Northeast Fisheries Observer Program (NEFOP) is managed by the Fisheries Sampling Branch (FSB) at the Northeast Fisheries Science Center (NEFSC). NEFOP observers serve aboard commercial fishing vessels from Maine to North Carolina as required by the Magnuson-Stevens Fishery Conservation and Management Act and the Marine Mammal Protection Act.

NMFS NEFSC requests information from fishermen who have had NEFOP observers on their vessels. This information would be collected on a voluntary basis as a qualitative survey to provide NMFS with direct feedback on observer performance. This information, upon receipt, will ensure higher data quality, help to detect fraud, assess contractor performance, provide feedback on observer performance, and offer a direct line of communication from fishermen to the NEFOP management.

II. Method of Collection

Paper survey with a pre-addressed, pre-paid postage to be submitted to the NEFOP at the NEFSC. The survey will also be available on the Internet.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; and business or other for-profits organizations.

Estimated Number of Respondents: 800.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 200.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 15, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–18770 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091505D]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of ten workshops to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Specifically, the Council will be soliciting information from fisheries stakeholders on topics relating to the potential incorporation of ecosystem-based approaches in New England fishery management. Recommendations from these workshops will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The workshops will be held in October and November 2005. See **SUPPLEMENTARY INFORMATION** for times and locations of the meetings.

ADDRESSES: Meeting address: The workshops will be held in Gouldsboro, ME; Rockland, ME; Portland, ME;

Portsmouth, NH; Gloucester, MA; Boston, MA; Mystic, CT; Hyannis, MA; Fairhaven, MA and Narragansett, RI. For specific locations, see **SUPPLEMENTARY INFORMATION.**

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The schedule for the ten workshops is as follows:

1. Sunday, October 2, 2005; Gouldsboro Fire Station, 6 Walters Road, Route 1, Gouldsboro, ME 04607; telephone: (207) 963–5589 at 1 p.m.

2. *Monday, October 3, 2005*; Tradewinds Motor Inn, 2 Park Drive, Rockland, ME 04841; telephone: (207) 596–6661 at 5:30 p.m.

3. *Tuesday, October 4, 2005*; Portland Fish Exchange, 6 Portland Fish Pier, Portland, ME 04101; telephone: (207) 773–0017 at 5:30 p.m.

4. *Wednesday, October 5, 2005*; Courtyard by Marriott, 1000 Market Street, Portsmouth, NH 03801; telephone: (603) 436–2121 at 5:30 p.m.

5. *Wednesday, October 12, 2005*; Massachusetts Division of Marine Fisheries, Annisquam River Marine Fisheries Station, 30 Emerson Avenue, Gloucester, MA 01930; telephone: (978) 282–0308 at 5:30 p.m.

6. *Thursday, October 13, 2005*; Seaport World Trade Center, 200 Seaport Boulevard, Boston, MA 02210; telephone: (617) 385–4212 at 5:30 p.m.

7. *Tuesday, October 18, 2005*: Comfort Inn, 48 Whitehall Avenue, Mystic, CT 06355; telephone: (860) 572–8531 at 5:30 p.m.

8. *Tuesday, November 1, 2005*: Radisson Hotel, 287 Iyannough Road, Hyannis, MA 02601; telephone: (508) 771–1700 at 5:30 p.m.

9. *Wednesday, November 2, 2005*: Hampton Inn, One Hampton Way, Fairhaven, MA 02719; telephone: (508) 990–8500 at 5:30 p.m.

10. *Thursday, November 3, 2005*: Village Inn, One Beach Street, Narragansett, RI 02882; telephone: (401) 783–6767 at 5:30 p.m.

Special Accommodations

These workshops are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–5141 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091505C]

Pacific Fishery Management Council; Coastal Pelagic Species Fishery Management Plan Work Sessions Focused on 2006 Pacific Sardine Harvest Guideline and Krill Management Alternatives

AGENCY:

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Advisory Subpanel (CPSAS) and Coastal Pelagic Species Management Team (CPSMT) will hold separate work sessions, which are open to the public.

DATES: The CPSMT will meet Wednesday, October 5, 2005 from 9 a.m. until business for the day is completed. The CPSAS will meet Thursday, October 6, 2005 from 9 a.m. until business for the day is completed.

ADDRESSES: The meetings will be held at National Marine Fisheries Service, Southwest Fisheries Science Center, Large Conference Room (A–216), 8604 La Jolla Shores Drive, La Jolla, California 92037, 858–546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Fishery Management Council, 503–820–2280.

SUPPLEMENTARY INFORMATION: The CPSMT and CPSAS will meet separately to review the 2005 Pacific sardine stock assessment and harvest guideline recommendation for the 2006 season, krill management alternatives, proposed fishing regulations in federal waters of the Channel Islands National Marine Sanctuary, and Vessel Monitoring System expansion alternatives. The CPSMT and CPSAS will develop recommendations on these items for presentation to the Council at the November 2005 Council meeting.

Although nonemergency issues not contained in the meeting agenda may come before the CPSAS or CPSMT for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSAS's or CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least five days prior to the meeting date.

Dated: September 15, 2005.

Alan D. Risenhoover,

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

[FR Doc. E5–5140 Filed 9–20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091405E]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and AtmosphericAdministration, Commerce.

ACTION: Notice of decision and availability of decision documents on the issuance of Endangered Species Act (ESA) research/enhancement Permit 1520 for takes of endangered species.

SUMMARY: This notice advises the public that a scientific research permit has been issued to the Confederated Tribes of the Colville Reservation, pursuant to the Endangered Species Act of 1973 (ESA), and that the decision documents are available upon request.

DATES: Permit 1520 was issued on August 10, 2005, subject to certain conditions set forth therein. The permit expires on December 31, 2010.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Recovery Division, NOAA's National Marine Fisheries Service, 1201 N.E. Lloyd Blvd., Suite 1100, Portland, Oregon

97232. The documents are also available on the Internet at *www.nwr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR, at phone number: (503) 230-5409, e-mail: *Kristine.Petersen@noaa.gov*

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs):

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Dated: September 15, 2005.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–18752 Filed 9– 20–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–43]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 19096.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–43 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 14, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2005

In reply refer to:
I-05/008862

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-43, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Spain for defense articles and services estimated to cost $41 million.

Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Spain**

(ii) **Total Estimated Value:**

Major Defense Equipment*	**$37 million**
Other	**$ 4 million**
TOTAL	**$41 million**

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 94 SM-1 Block VIB Tactical STANDARD missiles, 94 SM-1 MK 56 Dual Thrust Rocket Motors, containers, exercise heads, devices, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation, engineering and technical assistance, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.**

(iv) **Military Department: Navy (ANH)**

(v) **Prior Related Cases, if any: FMS case AMB - $34 million - 17Dec99**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 6 SEP 2005

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Spain – SM-1 Block VIB STANDARD Missiles

The Government of Spain has requested a possible sale of 94 SM-1 Block VIB Tactical STANDARD missiles, 94 SM-1 MK 56 Dual Thrust Rocket Motors, containers, exercise heads, devices, support and test equipment, spare and repair parts, personnel training and training equipment, publications and technical documentation, engineering and technical assistance, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $41 million.

Spain is a major political and economic power in southern NATO and the Atlantic and a key democratic partner of the United States in ensuring peace and stability in this region. The U.S. Government contracts maintenance and the use of facilities in Spain. It is vital for the U.S. to assist Spain's development and maintenance of a strong self-defense capability that is consistent with U.S. regional objectives. SM-1 sales promote those objectives and contribute to greater interoperability and cooperation between our navies.

More capable weapons already exist in the region: the U.S. Navy employs the SM-2 Block IIIB from cruisers/destroyers forward deployed in North Atlantic Treaty Organization and Central Command. Canada, Germany, Spain and The Netherlands all employ the SM-2 Block IIIA from their first-tier frigates and destroyers. In addition, other regional Navies use SM-1: Egypt, Turkey, Italy, France, Spain, The Netherlands and Poland. The German and Hellenic Navies, like the U.S. Navy, have divested themselves of the SM-1.

SM-1 and SM-2 missiles are in Spanish frigates and allow Spain to defend critical sea-lines of communication. Spain has six FFG 7-class ships with SM-1 and is building four-to-six new F100-class ships with SM-2. It has already integrated the SM-2 Block IIIA into its F100-class and conducted successful firings from F101 and F102 ships. It is finishing a new Intermediate-Level Maintenance Depot capable of maintaining both the SM-1 and SM-2, and is planning to upgrade this facility to maintain and support the newest Evolved Surface-to-air Missile systems and SM variants. The proposed sale of additional SM-1 Block VI-series missiles and replacement MK 56 rocket motors provides Spain's FFG 7-class improved capability against current anti-ship cruise missile, attack helicopter, and surface ship threats.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be:

Raytheon Company	**Tucson, Arizona**
(two locations)	**Camden, Arkansas**
Aerojet General Corporation	**Sacramento, California**

Offset agreement associated with this proposed sale are expected, but at this time the specific offset agreements are undetermined and will be defined in negotiations between the purchaser and contractors.

Implementation of this proposed sale will not require the assignment of any U.S. Government or contractor representatives to Spain.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-43

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The STANDARD Missile-1 (SM-1) Block VI-series (VI/VIA/VIB) is a former-U.S. Navy surface-launched guided missile (completely divested from the U.S. Navy Fleet) and is classified Confidential. It is operationally deployed on small frigates for use against air and surface threats (aircraft, missiles, helicopters, and ships). The FFG-7's MK 92 missile fire control system employs a continuous wave illuminator which locks on a target. The SM-1 homes on illuminator energy reflected from the target. Propulsion is provided by a solid propellant, dual thrust rocket motor that is an integral part of the missile airframe. The SM-1 Target Detecting Device (TDD) is a complex fuze optimized to destroy targets of varying sizes and speeds.

2. The guidance and control system and the TDD represent technology which, if compromised, could reveal areas of missile performance and potentially result in the development of SM-1 countermeasures or equivalent systems capable of reducing weapon system effectiveness. This information could also be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–18754 Filed 9–20–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–33]

36(b)(1)Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–33 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: September 14, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

6 SEP 2005

In reply refer to:
I-05/007012

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-33, concerning the Department of the Navy's proposed Letters(s) of Offer and Acceptance to Turkey for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**
4. **Section 620C(d)**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Turkey**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$35 million
Other	$ 5 million
TOTAL	$40 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: The Government of Turkey has requested a possible sale of**

Major Defense Equipment (MDE)

50 AGM-154A-1 Joint Standoff Weapon (JSOW) with BLU-111 and
54 AGM-154C JSOW

Non-MDE

4 AGM-154A-1 JSOW Dummy Air Training;
3 AGM-154 JSOW Captive Flight Vehicles;
3 AGM-154 JSOW Missile Simulation Units; and

Also included are containers, software development/integration, test sets and support equipment, system integration and testing, simulation units, spare and repair parts, training devices, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support.

(iv) **Military Department: Navy (AID and GIU)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 6 SEP 2005

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Turkey – AGM-154A/C Joint Standoff Weapons

The Government of Turkey has requested a possible sale of

Major Defense Equipment (MDE)

50 AGM-154A-1 Joint Standoff Weapon (JSOW) with BLU-111 and
54 AGM-154C JSOW

Non-MDE

4 AGM-154A-1 JSOW Dummy Air Training;
3 AGM-154 JSOW Captive Flight Vehicles;
3 AGM-154 JSOW Missile Simulation Units; and

Also included are containers, software development/integration, test sets and support equipment, system integration and testing, simulation units, spare and repair parts, training devices, publications and technical data, maintenance, personnel training and training equipment, U.S. Government (USG) and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $35 million.

The Government of Turkey is a political and economic power in Europe and the Middle East, a member of NATO, and a partner of the United States in ensuring peace and stability in those regions. It is vital to the U.S. national interest to assist our Turkish ally in developing and maintaining a strong and ready self-defense capability that will contribute to an acceptable military balance in the area. This proposed sale is consistent with those objectives. This proposed sale would strengthen military/political ties and extend USG influence in the procurement and usage of military equipment. Sale of equipment, plus future dependence upon USG technical assistance, publications, training, and repair capability will help to ensure continued support for USG initiatives, both militarily and politically, within the region.

We previously notified transmittal number 05-12 to Congress on 7 October 2004 for the possible sale for modernization of 218 F-16 aircraft. This proposed sale included modifying 104 F-16 Block 40, 76 F-16 Block 50 and 38 F-16 Block 30 aircraft; integration and testing for several major defense items; and logistics support for an estimated value of $3.888 billion.

This proposed sale is in conjunction with the planned modernization of Turkey's F-16 fighter aircraft. Turkey will use the JSOW as a standoff weapon, which will enhance the capabilities for mutual defense, regional security, and modernization. The proposed quantity is adequate to meet the needs of the Turkish Air Force for NATO and coalition operations. The munitions will be provided in accordance with, and subject to the limitation on use and transfer provided under the Arms Export Control Act, as amended, as embodied in the Letter of Offer and Acceptance.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus questions.

The prime contractor will be Raytheon Systems Corporation of Tucson, Arizona. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require temporary visits of U.S. Government and contractor representatives to Turkey for program technical/management oversight and support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-33

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AGM-154 Joint Standoff Weapon (JSOW) is a low cost, launch and leave, air launched standoff weapon that provides aircraft with a capability to attack well defended targets in day, night, and less-than-ideal weather conditions. The AGM-154A-1 with BLU-111 and AGM-154C missiles, including publications, documentation, operations, supply, maintenance, and training to be conveyed with this proposed sale have the highest classification level of Confidential.

2. The AGM-154A-1 with BLU-111 and AGM-154C JSOW incorporate components, software, and technical design information that are considered sensitive. The following JSOW components being conveyed by the proposed sale that are considered sensitive and may be classified up to Confidential include:

a. global positioning system/inertial navigation system
b. imaging infrared seeker
c. operation flight program software
d. missile operational characteristics and performance data

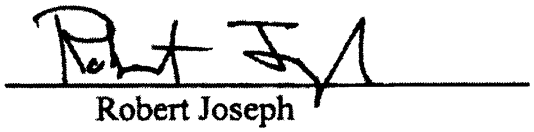
These elements are essential to the ability of the JSOW missile to selectively engage hostile targets under a wide range of operational, tactical and environmental conditions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

CERTIFICATION PURSUANT TO § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 145, I hereby certify that the sale of defense articles and defense services, to include AGM-154A-1 Joint Standoff Weapon (JSOW) with BLU-111, AGM-154C JSOW, AGM-154-1 JSOW Dummy Air Training, AGM-154 JSOW Captive Flight Vehicles, AGM-154 JSOW Missile Simulation Units, containers, software development/integration, test sets and support equipment, system integration and testing, simulation units, spare and repair parts, training devices, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support, to the Government of Turkey is consistent with the principles set forth in § 620C(b) of the Act.

This certification will be made part of the notification to Congress in accordance with § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.



Robert Joseph
Under Secretary of State
for Arms Control and
International Security

[FR Doc. 05–18755 Filed 9–20–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–29)

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–29 with attached transmittal, policy justification, Sensitivity of Technology and Section 620C(d).

Dated: September 14, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

8 SEP 2005
In reply refer to:
I-05/005909

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-29, concerning the Department of the Air Force's proposed Letters(s) of Offer and Acceptance to Turkey for defense articles and services estimated to cost $175 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**
3. **Sensitivity of Technology**
4. **Section 620C(d)**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Turkey

(ii) Total Estimated Value:

Major Defense Equipment*	$130 million
Other	$ 45 million
TOTAL	$175 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: The Government of Turkey has requested a possible sale of:

Major Defense Equipment (MDE)

215 AN/APX-113 Advanced Identification Friend or Foe (AIFF);
203 Link 16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT);
2 AGM-84H Standoff Land Attack Missile-Expanded Response Exercise Missiles (SLAM-ER);
2 AGM-88B High-Speed Anti-Radiation Missile Captive Air Training Missiles (HARM);
50 CBU-103 and 50 CBU-105 Wind Corrected Munition Dispensers;
Joint Direct Attack Munition Kits: 200 GBU-31 Guided Bomb Unit (GBU) kits, 200 GBU-38 kits, and 100 BLU-109;
Joint Direct Attack Munition Integration Test Assets: 6 GBU-31 and 4 GBU-38 kits.

Non-MDE

1 AGM-154 Joint Standoff Weapon (JSOW) Missile Simulation Unit;
2 AGM-154C JSOW Captive Flight Vehicles;
2 AGM-84H SLAM-ER Missile Guidance Sections;
1 AGM-84H SLAM-ER Recoverable Air-Test Vehicles;
2 AGM-84L HARPOON Captive Air Training Missiles;
2 AGM-84L HARPOON Missile Guidance Sections;
1 AGM-88B HARM MOD III Telemetry Section; and
2 AIM-9X SIDEWINDER Captive Air Training Missiles

* as defined in Section 47(6) of the Arms Export Control Act.

Also included are system integration and testing, missile modifications, software development/integration, test sets and support equipment, simulation units, link pods, spare and repair parts, training devices, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $175 million.

(iv) **Military Department: Air Force (NCU, Amendment 2, QAT, and YAS)**

(v) **Prior Related Cases, if any:**

FMS case NCE	**-**	**$1,099 million**	**-**	**26Apr05**
FMS case SLA	**-**	**$2,343 million**	**-**	**26Mar92**
FMS case SFA	**-**	**$3,270 million**	**-**	**09Dec83**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress:** 8 SEP 2005

POLICY JUSTIFICATION

Turkey - Munitions and Aircraft Components for F-16 Aircraft

The Government of Turkey has requested a possible sale of:

Major Defense Equipment (MDE)

215 AN/APX-113 Advanced Identification Friend or Foe (AIFF);
203 Link 16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT);
2 AGM-84H Joint Standoff Land Attack Missile-Expanded Response Exercise Missiles;
2 AGM-88B High-Speed Anti-Radiation Missile Captive Air Training Missiles;
50 CBU-103 and 50 CBU-105 Bombs;
Joint Direct Attack Munition Kits: 200 GBU-31 Guided Bomb Unit (GBU) kits, 200 GBU-38 kits, and 100 BLU-109;
Joint Direct Attack Munition Integration Test Assets: 6 GBU-31 and 4 GBU-38 kits.

Non-MDE

1 AGM-154 Joint Standoff Weapon (JSOW) Missile Simulation Unit;
2 AGM-154C JSOW Captive Flight Vehicles;
2 AGM-84H SLAM-ER Missile Guidance Sections;
1 AGM-84H SLAM-ER Recoverable Air-Test Vehicles;
2 AGM-84L HARPOON Captive Air Training Missiles;
2 AGM-84L HARPOON Missile Guidance Sections;
1 AGM-88B HARM MOD III Telemetry Section; and
2 AIM-9X SIDEWINDER Captive Air Training Missiles

Also included are system integration and testing, missile modifications, software development/integration, test sets and support equipment, simulation units, link pods, spare and repair parts, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contractor representatives, contractor engineering and technical support services, and other related elements of logistics support. The estimated cost is $175 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey and further weapon system standardization and interoperability with U.S. forces.

This proposed modernization will enhance the Turkish Air Force's ability to defend Turkey while patrolling the nation's extensive coastline and borders against future threats and to contribute to the Global War on Terrorism and NATO operations. Turkey needs these capabilities for mutual defense, regional security, modernization, and U.S. and NATO interoperability. The proven reliability and compatibility of like systems integrated with numerous platforms will foster increased interoperability with NATO and U.S. forces, and expand regional defenses to counter common threats to air, border, and shipping assets in the region. The modernization of the F-16 aircraft will be provided in accordance with, and subject to the limitation on use and transfer provided under, the Arms Export Control Act, as amended, as embodied in the Letter of Offer and Acceptance.

Link-16 MIDS LVT improves interoperability with U.S. and NATO by providing Turkish aircraft with enhanced command, control communications system with high volume voice and data link.

Weapons integration will enable Turkey to keep pace with advances in technologies among other regional powers and solidify Turkey's ability to fight alongside the United States.

This proposed sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus questions.

The principal contractors will be:

ViaSat	**Carlsbad, California**
BAE Advanced Systems	**Greenlawn, New York**
Boeing Integrated Defense Systems (three locations)	**St Louis, Missouri** **Long Beach, California** **San Diego, California**
Raytheon Missile Systems	**Tucson, Arizona**

Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

The number of U.S. Government and contractor representatives to support this program will depend on results of negotiations with Turkish defense contractors on the content of local work and subsequent decisions by the Government of Turkey on contractor responsibilities for modification effort.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-29

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/APX-113 Advanced Identification Friend or Foe is a combined interrogator/transponder. The system generates and responds to friendly interrogations to provide target identification. It provides for FAA and ICAO mandated IFF Mode IIIC, as well as military Modes 1, 2, and 4. National Security Agency controlled COMSEC is required for classified military modes, including interrogation, to function. It also can operate in Mode S and has growth potential for Mode 5, which are newly adopted DoD requirements. The system is Unclassified until loaded with COMSEC; then it becomes Secret.

2. The Multifunctional Information Distribution System-Low Volume Terminal (MIDS-LVT) is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. MIDS-LVT is intended to support key theater functions such as surveillance, identification, air control, weapons engagement coordination, and direction for all services and allied forces. The system will provide jamming-resistant, wide-area communications on a Link-16 network among MIDS and Joint Tactical Information Distribution System (JTIDS) equipped platforms. The MIDS/LVT and MIDS On Ship Terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

3. The Standoff Land Attack Missile/Expanded Response (SLAM-ER) is an air-launched, day/night, adverse weather, over-the-horizon, precision strike missile. SLAM-ER provides an effective, long range, precision strike option for both pre-planned and Target of Opportunity attack missions against land and maneuvering ship targets, and other moving targets. SLAM/ER contains a highly accurate, global

positioning system-aided guidance system; an imaging infrared seeker and two-way data link with the AWW-13 Advanced Data Link pod for Man-In-The-Loop (MITL) control; improved missile aerodynamic performance characteristics that allow both long range and flexible terminal attack profiles; and an ordnance section with good penetrating power and lethality. Advanced features on SLAM-ER include Automatic Target Acquisition (ATA). This function improves target acquisition in cluttered scenes, overcomes most infrared countermeasures, and mitigates the effects of environmentally degraded conditions. The SLAM-ER All Up Round (AUR) is classified Confidential; individual components (guidance, seeker, radome, warhead, and other components) are all classified Confidential; technical data and other documentation are classified up to Secret.

4. The AGM-88B High-Speed Anti-Radiation Missile (HARM) is a supersonic air-to-surface missile designed to seek and destroy enemy radar equipped air defense systems. HARM has a proportional guidance system that homes in on enemy radar emissions through a fixed antenna and seeker head in the missile nose. The missile consists of four sections including guidance, warhead, control section and rocket motor. AUR is classified Confidential; major components and subsystems range from Unclassified up to Secret; technical data and other documentation is up to Secret.

5. The Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, adverse weather "smart" munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The JDAM AUR and all of its components are Unclassified; technical data for JDAM is classified up to Secret.

6. The AGM-154 Joint Standoff Weapon (JSOW) is a low observable, 1,000 lb. class, INS/GPS-guided, family of air-to-ground precision glide weapons. JSOW consists of a common airframe and avionics that provides for a modular payload assembly to attack stationary targets. JSOW provides combat forces with all weather, day/night, multiple kills per pass, launch and leave, and standoff capability (15 to 65 nm). JSOW A+ contains a 500 lb. warhead effective against armored vehicles, tanks, as well as soft targets. JSOW C incorporates an un-cooled, terminal-guidance imaging infrared seeker and a two-stage warhead composed of a shaped-charge precursor and a small penetrating warhead. It is effective against any target vulnerable to blast fragmentation and penetration. The JSOW AUR is Unclassified, including interrogation; major components and subsystems are classified up to Secret; and technical data and other documentation are up to Secret.

7. The AGM-84 Harpoon is an all weather, over-the-horizon, anti-ship missile system. Its low-level, sea-skimming cruise trajectory, active radar guidance and warhead design assure high survivability and effectiveness. The Harpoon missile is designed as an anti-ship cruise missile. It cruises just above the water's surface toward its target and just before impact does a terminal pop-up maneuver to counter close-in defenses and enhance warhead penetration. The Harpoon AUR is classified Confidential; individual components (guidance, seeker, radome, warhead, and other components) are all classified Confidential; technical data and other documentation are classified up to Secret.

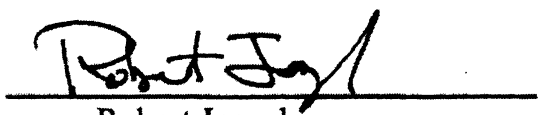
8. The AIM-9X Sidewinder missile is a supersonic, air-to-air guided missile that employs a passive infrared (IR) target acquisition system, proportional navigational guidance, a closed-loop position servo Fin Actuator Unit, and a Target Detector. It features digital technology and micro-miniature solid-state electronics. A solid-propellant Rocket Motor propels the missile. The AIM-9X is configured with an Annular Blast Fragmentation warhead controlled by an Electronic Safe-Arm Device. Jet Vane Control provides enhanced maneuverability over other variants of the AIM-9, as well as most currently fielded foreign infrared missiles, by deflecting rocket motor thrust to aid in turning. The AIM-9X AUR is Confidential; major components and subsystems range from Unclassified to Confidential; and technical data and other documentation are classified up to Secret.

9. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

CERTIFICATION PURSUANT TO § 620C(d) OF THE FOREIGN ASSISTANCE ACT OF 1961, AS AMENDED

Pursuant to § 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 and State Department Delegation of Authority No. 145, I hereby certify that the sale of defense articles and defense services, to include 215 AN/APX-113 Advanced Identification Friend or Foe (AIFF), 203 Link 16 Multifunctional Information Distribution System-Low Volume Terminals (MIDS-LVT), 2 AGM-84H Standoff Land Attack Missile-Expanded Response Exercise Missiles (SLAM-ER), 2 AGM-88B High-Speed Anti-Radiation Missile Captive Air Training Missiles (HARM), 50 CBU-103 and 50 CBU-105 Wind Corrected Munition Dispensers, 200 GBU-31 Guided Bomb Unit (GBU) kits, 200 GBU-38 kits, 100 BLU-109, 6 GBU-31 kits, 4 GBU-38 kits, 1 AGM-154 Joint Standoff Weapon (JSOW) Missile Simulation Unit, 2 AGM-154C JSOW Captive Flight Vehicles, 2 AGM-84H SLAM-ER Missile Guidance Sections, 1 AGM-84H SLAM-ER Recoverable Air-Test Vehicle, 2 AGM-84L HARPOON Captive Air Training Missiles, 2 AGM-84L HARPOON Missile Guidance Sections, 1 AGM-88B HARM MOD III Telemetry Section, 2 AIM-9X SIDEWINDER Captive Air Training Missiles, system integration and testing, missile modifications, software development/integration, test sets and support equipment, simulation units, link pods, spare and repair parts, training devices, publications and technical data, maintenance, personnel training and training equipment, U.S. Government and contactor representatives, contactor engineering and technical support services, and other related elements of logistics support, to the Government of Turkey is consistent with the principles set forth in § 620C(b) of the Act.

This certification will be made part of the notification to Congress in accordance with § 36(b) of the Arms Export Control Act, as amended, regarding the proposed sale of the above-named articles and services and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.



Robert Joseph
Under Secretary of State
for Arms Control and
International Security

[FR Doc. 05–18756 Filed 9–20–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 21, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 15, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Extension.

Title: Survey on Ensuring Equal Opportunity for Applicants.

Frequency: Annually.

Affected Public: Not-for-profit institutions (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 17,000.

Burden Hours: 1,360.

Abstract: To ensure equal opportunity for all applicants including small community-based and faith-based and religious groups. It is essential to collect information that allows Federal agencies to determine the level of participation of such organizations in Federal grant programs while ensuring that such information is not used in grant-making decisions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2881. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–18801 Filed 9–20–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Open Meeting of the National Advisory Council on Indian Education

AGENCY: National Advisory Council on Indian Education (NACIE), U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Council. Notice of the Council meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Council's charter.

AGENDA: The purpose of the meeting will be to discuss the Annual Report to Congress, and receive updates from the Office of Indian Education (OIE) staff on OIE Formula and Discretionary grant programs, including the OIE National Activities. The Council will also receive a briefing from the Deputy Director on the Best Practice Competition, an OIE program that recognizes successful programs operated by OIE grantees, as the No Child Left Behind Act is implemented in a manner that is consistent with tribal traditions, language and culture. The Council will review and update the NACIE activity plan and receive subcommittee reports.

DATE AND TIME: October 06, 2005; 9 a.m. to 4 p.m.

LOCATION: Adam's Mark Hotel, 1550 Court Place, Denver, Co 80202.

FOR FURTHER INFORMATION CONTACT: Bernard Garcia, Group Leader, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone: 202–260–1454. Fax: 202–260–7770.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act (ESEA). On June 30th, the council submitted to the congress a report that included recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

The general public is welcome to attend the October 06, 2005 open meeting to be held from 9 a.m. to 4 p.m. Denver, CO. Individuals who need accommodations for a disability in order to participate (*i.e.,* interpreting services,

assistive listening devices, materials in alternative format) should notify Bernard Garcia at 202–260–1454 by September 29, 2005. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. Records are kept of all Council proceedings and are available for public inspection at the Office of Indian Education, United States Department of Education, Room 5C141, 400 Maryland Avenue, SW., Washington, DC 20202.

Henry L. Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–18858 Filed 9–20–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting service, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than 2 p.m., on Thursday, September 22, 2005 by contacting Ms. Hope Gray at (202) 219–2099 or via e-mail at *Hope.Gray@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public. **Note:** Due to circumstances surrounding the availability of Committee members to participate in a formal meeting and other scheduling conflicts, it is necessary to hold a teleconference before September 30 to address vital Advisory Committee business. Therefore, we were unable to publish this notice 15 days in advance of the scheduled teleconference as required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: Monday, September 26, 2005, beginning at 2:30 p.m., and ending at approximately 4:30 p.m.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Ms. Nicole A. Barry, Deputy Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference solely to conduct the election of officers and other Committee business. The proposed agenda includes (a) the election of officers and (b) of discussion of the Advisory Committee's FY2006 work plan.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following address: *ACSFA@ed.gov* or *Tracy.Deanna.Jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Friday, September 23, 2005.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC, from the hours of 9 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *http://www.ed.gov/ACSFA.*

Dated: September 15, 2005.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 05–18772 Filed 9–20–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Record of Decision for the Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, UT

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to implement the preferred alternatives identified in the Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Final Environmental Impact Statement (DOE/EIS–0355) (Final EIS). By implementing the preferred alternatives, DOE will remove the uranium mill tailings and other contaminated material from the Moab milling site and nearby off-site properties (vicinity properties) and relocate them at the Crescent Junction site, using predominantly rail transportation. DOE will also implement active ground water remediation at the Moab milling site. In reaching this decision, DOE considered the potential environmental impacts, costs, and other implications of both on-site and off-site disposal. For off-site disposal, DOE considered three alternative sites in Utah (Crescent Junction, Klondike Flats, and the White Mesa Mill) and three transportation modes (truck, rail, and slurry pipeline).

DOE identified off-site disposal as its preferred alternative for the disposal of mill tailings, primarily because of the uncertainties related to long-term performance of a capped pile at the Moab site. Issues, such as the potential for river migration and severe flooding contribute to this uncertainty. The

Crescent Junction site was identified as the preferred off-site disposal location, rather than Klondike Flats or White Mesa Mill, because Crescent Junction has the longest isolation period (time it would take for contaminants to reach the ground water); the lowest land-use conflict potential; access to existing rail lines without crossing U.S. Highway 191; the shortest haul distance from the rail rotary dump into the disposal cell, reducing the size of the radiological control area; and flat terrain, making operations easier and safer. DOE identified rail as the preferred mode of transportation, because compared to truck transportation, rail has a lower accident rate, lower potential impacts to wildlife, and lower fuel consumption. In addition, compared to a slurry pipeline, rail transportation would have a much lower water demand and would avoid landscape scars caused by pipeline construction, which could create moderate contrasts in form, line, color, and texture with the surrounding landscape.

This Record of Decision (ROD) has been prepared in accordance with the regulations of the Council on Environmental Quality (Title 40 Code of Federal Regulations (CFR) Parts 1500–1508) for implementing the National Environmental Policy Act (NEPA) and DOE's NEPA Implementing Procedures (10 CFR Part 1021). The Final EIS also includes a Floodplain and Wetlands Assessment and a Floodplain Statement of Findings in compliance with DOE's Floodplain and Wetland Environmental Review requirements (10 CFR Part 1022).

ADDRESSES: Copies of the Final EIS and this ROD may be requested by calling 1–800–637–4575, a toll-free number, or by contacting Mr. Donald Metzler, Moab Federal Project Director, U.S. Department of Energy, by mail: 2597 B ¾ Road, Grand Junction, Colorado, 81503; by fax: 1–970–248–7636; by phone: 1–800–637–4575 or 1–970–248–7612; or e-mail: *moabcomments@gjo.doe.gov.* The Final EIS is also available, and this ROD will be available, on the DOE NEPA Web site, at *http://www.eh.doe.gov/nepa/documents.html* and on the project Web site at *http://gj.em.doe.gov/moab/.*

FOR FURTHER INFORMATION CONTACT: For further information on the Remediation of the Moab Uranium Mill Tailings, Grand and San Juan Counties, Utah, Final Environmental Impact Statement, contact Donald Metzler, as indicated in the **ADDRESSES** section above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; telephone 1–202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In the Final EIS, DOE considers the environmental impacts associated with the disposal of uranium mill tailings currently on the Moab milling site and on vicinity properties at the Moab milling site or at one of three alternative sites in Utah: Crescent Junction, Klondike Flats, or the White Mesa Mill. The Final EIS also considers three transportation modes—truck, rail, and slurry pipeline—for moving the tailings from the Moab site to the off-site alternatives. In addition, the EIS considers active ground water remediation at the Moab milling site to address ground water contamination that resulted from past mill operations.

Because the activities assessed in the Final EIS could affect Federal, state, and private lands and pass through several local and county jurisdictions, 12 agencies and municipalities worked with DOE as cooperating agencies in the preparation of the EIS. These cooperating agencies are the Bureau of Land Management (BLM); National Park Service; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency (EPA); U.S. Fish and Wildlife Service (USF&WS); U.S. Nuclear Regulatory Commission (NRC); the State of Utah; the Ute Mountain Ute Tribe; Grand County; San Juan County; the City of Blanding; and the Community of Bluff. Because the Crescent Junction site is currently on land managed by BLM, the Department of the Interior will complete a Public Land Order, based upon DOE's application for land withdrawal, this ROD, and the Final EIS, that will transfer jurisdiction of the Crescent Junction site to DOE. BLM will, as necessary, also grant permits for removal of borrow materials (such as soil, sand, gravel, and rock) from BLM lands.

Background: In 1978, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA), 42 United States Code, (U.S.C.) 7901 *et seq.*, in response to public concern regarding potential health hazards of long-term exposure to radiation from uranium mill tailings. Title I of UMTRCA required DOE to establish a remedial action program and authorized DOE to stabilize, dispose of, and control uranium mill tailings and other contaminated material (called residual radioactive material [RRM]), at 22 uranium-ore processing sites and associated vicinity properties. Vicinity properties are those off-site areas near the Moab milling site that can be confirmed to be contaminated with RRM. UMTRCA also directed EPA to promulgate cleanup standards, which are now codified at 40 CFR Part 192, ''Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings,'' and directed NRC to oversee the cleanup and license the completed disposal cells. In October 2000, Congress enacted the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Public Law 106–398), amending UMTRCA Title I, to give DOE responsibility for remediation of the Moab milling site, in accordance with UMTRCA Title I (DOE's authority to perform surface remedial action at eligible uranium milling sites and vicinity properties expired in 1998 for all other sites.).

The Moab milling site lies approximately 30 miles south of Interstate 70 (I–70) on U.S. Highway 191 (US–191) in Grand County, Utah. The 439-acre milling site is located about 3 miles northwest of the city of Moab on the west bank of the Colorado River at the confluence with the Moab Wash. The milling site is bordered on the north and southwest by steep sandstone cliffs. The Colorado River forms the eastern boundary of the milling site. US–191 parallels the northern site boundary, and the State Road 279 (SR–279) transects the west and southwest portion of the property. Arches National Park has a common property boundary with the Moab milling site on the north side of US–191, and the park entrance is located less than 1 mile northwest of the milling site. Canyonlands National Park is located about 12 miles to the southwest.

At the Moab milling site, a former uranium-ore processing facility was owned and operated by the Uranium Reduction Company and later by the Atlas Minerals Corporation (Atlas) under a license issued by NRC. The mill ceased operations in 1984 and has been dismantled except for one building that is currently used by DOE. During its years of operation, the facility accumulated uranium mill tailings, which are naturally radioactive residue from the processing of uranium ore. The uranium mill tailings are located in a 130-acre unlined pile that occupies much of the western portion of the milling site. The top of the tailings pile averages 94 feet above the Colorado River floodplain and is about 750 feet from the Colorado River. The pile was constructed with five terraces and consists of an outer compact embankment of coarse tailings, an inner impoundment of both coarse and fine

tailings, and an interim cover of soils taken from the milling site outside the pile area. Debris, from dismantling the mill buildings and associated structures, was placed in an area at the south end of the pile and covered with contaminated soils and fill. Radiation surveys indicate that some soils outside the pile also contain radioactive contaminants at concentrations in excess of those allowed in the EPA standards in 40 CFR Part 192.

In addition to the contaminated materials currently at the Moab milling site, tailings may have been removed from the Moab milling site and used as construction or fill material at homes, businesses, public buildings, and vacant lots in and near Moab. As a result, these vicinity properties may have elevated concentrations of radium-226 that exceed the maximum concentration limits in 40 CFR Part 192. In accordance with the requirements of UMTRCA, DOE is obligated to remediate those properties where contaminant concentrations exceed the maximum concentration limits in 40 CFR Part 192, along with the Moab milling site. DOE estimates the total residual radioactive material at the Moab milling site and vicinity properties has a total mass of approximately 11.9 million tons and a volume of approximately 8.9 million cubic yards.

Ground water in the shallow alluvium at the site was contaminated by ore-processing operations. The Colorado River, adjacent to the site, has been affected by site-related contamination, mostly due to ground water discharge. The primary contaminant of concern in the ground water and surface water is ammonia. Other contaminants of potential concern are manganese, copper, sulfate, and uranium. DOE is currently conducting interim ground water remedial actions.

Previous NEPA Review

In September 1998, the former Moab milling site owner, Atlas, filed for bankruptcy. The bankruptcy court appointed NRC and the Utah Department of Environmental Quality as beneficiaries of a bankruptcy trust created in March 1999, to fund future reclamation and site closure. Later, the beneficiaries selected PricewaterhouseCoopers to serve as trustee. To support its remediation decision-making, NRC issued the Final Environmental Impact Statement Related to Reclamation of the Uranium Mill Tailings at the Atlas Site, Moab, Utah (NUREG–1531, March 1999), which proposed stabilizing the tailings impoundment (pile) in place.

NRC received numerous comments both in favor of and opposed to the proposed action. However, NRC's EIS did not address ground water compliance or remediation of vicinity properties. NRC documented USF&WS concerns regarding the effects of contaminants reaching the Colorado River; specifically, the effects on four endangered fish species and critical habitat. (In 1998, USF&WS had concluded in a Biological Opinion that continued leaching of existing concentrations of ammonia and other constituents into the Colorado River would jeopardize the razorback sucker and Colorado pikeminnow.)

In accordance with Public Law 106–398, DOE acquired the Moab milling site in 2001 to facilitate remedial action. DOE's EIS built upon the analyses and the alternatives evaluated in NRC's EIS, and expanded the scope of the EIS to include remediation of ground water and vicinity properties. During this decision-making process, to minimize potential adverse effects to human health and the environment in the short term, former site operators, custodians, and DOE have instituted environmental controls and interim actions at the Moab milling site. Controls have included: Storm water management; dust suppression; pile dewatering activities; and placement of an interim cover on the tailings, to prevent movement of contaminated windblown materials from the pile. Interim actions have included: Restricting site access; monitoring ground water and surface water; and managing and disposing of chemicals, to minimize the potential for releases to the Colorado River.

DOE's EIS Process

DOE began the preparation of an EIS to support its decision-making process for the Moab milling site with a Notice of Intent (NOI) published on December 20, 2002, in the **Federal Register** (67 FR 77970). Public scoping meetings were held in four Utah cities in January 2003, during the scoping comment period, which ended February 14, 2003. After considering public comments and input from the 12 cooperating agencies, DOE issued the Draft EIS in November 2004. During a 90-day public comment period that ended on February 18, 2005, DOE conducted four public hearings on the Draft EIS in Moab, Green River, Blanding, and White Mesa, Utah. In preparing the Final EIS, DOE considered over 1,600 comments that it received, including late comments. In April 2005, DOE announced its preferred alternatives of off-site disposal, using predominantly rail transport to the Crescent Junction, Utah site and active ground water remediation. The Final EIS was issued in July 2005.

The Proposed Action

DOE is proposing to clean up surface contamination and implement a ground water compliance strategy to address contamination that resulted from historical uranium-ore processing at the Moab milling site pursuant to NEPA, 42 U.S.C. 4321 *et seq.* and UMTRCA, 42 U.S.C. 7901 *et seq.*

Alternatives

DOE analyzed the following alternatives in the EIS:

No Action: Under the No Action alternative, DOE would not remediate contaminated material, either on the site or at vicinity properties. The existing tailings pile would not be covered and managed in accordance with standards in 40 CFR Part 192. No short-term or long-term site controls or activities to protect human health and the environment would be continued or implemented. Public access to the site is assumed to be unrestricted. All site activities, including operation and maintenance, and ongoing interim ground water remediation activities, would cease. A compliance strategy for contaminated ground water beneath the site would not be developed, in accordance with standards in 40 CFR Part 192. No institutional controls would be implemented to restrict use of ground water, and no long-term stewardship and maintenance would take place. Because no activities would be budgeted or scheduled at the site, no further initial, interim, or final remedial action costs would be incurred. DOE recognizes that this scenario would be highly unlikely; however, it was included as a part of the EIS analyses, to provide a basis for comparison to the action alternatives assessed in the EIS, as required by NEPA.

Disposal alternatives

On-site Disposal: The on-site disposal alternative would involve placing contaminated site materials and materials from vicinity properties on the existing tailings pile and stabilizing and capping the tailings pile in place. The cap would be designed to meet EPA standards for radon releases. Final design and construction of the cap would meet the requirements for disposal cells under applicable EPA standards (40 CFR Part 192). Flood protection would be constructed along the base of the pile, and cover materials for radon attenuation and erosion protection would be brought to the site from suitable borrow areas.

Off-site Alternatives: DOE evaluated three sites in Utah for off-site disposal: Crescent Junction; Klondike Flats; and the White Mesa Mill.

Crescent Junction. The Crescent Junction site is approximately 30 miles northwest of the Moab milling site and 20 miles east of the city of Green River, just northeast of the Crescent Junction interchange on Interstate 70 and U.S. Highway 191. The site consists of undeveloped land administered by BLM.

Klondike Flats. Klondike Flats is a low-lying plateau about 18 miles northwest of the Moab milling site, just northwest of the Canyonlands Field Airport and south-southeast of the Grand County landfill. The Klondike Flats site consists of undeveloped lands administered by BLM and the State of Utah School and Institutional Trust Lands Administration.

White Mesa Mill. The White Mesa Mill site is approximately 85 miles south of the Moab site, 4 miles from the Ute Mountain Indian Reservation and the community of White Mesa, and 6 miles from Blanding in San Juan County, Utah. This commercial, state-licensed, uranium mill is owned by the International Uranium (USA) Corporation and disposes of processed tailings materials on-site in lined ponds. It has been in operation since 1980. The facility would need a license amendment from the State of Utah, before it could accept material from the Moab milling site.

Off-site Disposal Transportation Alternatives: For each of the off-site disposal alternatives, DOE evaluated three modes of transporting RRM from the Moab milling site: truck, rail, and slurry pipeline.

Truck Transport. Trucks would use US–191, as the primary transportation route, for hauling contaminated materials and oversized debris to the selected disposal site. Trucks would be used exclusively for hauling borrow materials to the selected disposal site. Construction of highway entrance and exit facilities would be necessary to safely accommodate the high volume of traffic currently using this highway.

Rail Transport. An existing rail line runs from the Moab milling site north along US–191, and connects with the main east-west line near I–70. The Crescent Junction and Klondike Flats sites could be served from this rail line with upgrades and additional rail sidings. There is no rail access from the Moab milling site to the White Mesa Mill site. Construction of a rail line from the Moab milling site to the White Mesa Mill site was not analyzed in detail, because of the technical difficulty, potential impacts, and high cost.

Slurry Pipeline. This transportation mode would require construction of a new buried pipeline from the Moab site to the selected disposal site and a buried water line to recycle the slurry water back to the Moab milling site for reuse in the pipeline.

Ground Water Remediation Alternative

Active ground water remediation would be implemented under both the on-site and off-site disposal alternatives. DOE's proposed action for ground water at the Moab milling site is to apply ground water supplemental standards, in accordance with 40 CFR Part 192, Subpart C, and implement an active remediation system to intercept and control discharge of contaminated ground water to the Colorado River. Because of its naturally high salt content, the uppermost aquifer at the Moab site is not a potential source of drinking water. The active remediation system would extract and treat ground water, while natural processes act on ground water to decrease contaminant concentrations to meet long-term protective ground water cleanup goals. Active remediation would cease after long-term goals were achieved. Conceptually, the same system would be installed and operated at the Moab milling site regardless of whether the on-site or off-site disposal alternative was implemented.

Analysis of Environmental Impacts

The Final EIS assessed environmental impacts in detail, including impacts to physical, biological, socioeconomic, cultural, and infrastructure resources that could occur under: the on-site disposal alternative; the off-site disposal alternative; three transportation modes; and the No Action alternative. The impact analyses in the Final EIS determined that there were many resource areas such as air quality, terrestrial ecology, land use, noise and vibration, visual, human health, infrastructure, waste management, and socioeconomics, in which the impacts would neither be significant nor violate any standards, or for which there would be little difference among alternatives and, therefore, these impact areas were not discriminators among the alternatives. This ROD focuses on the potential impacts (both adverse and beneficial) that discriminate among the alternatives and made the most significant contribution to DOE's decision-making. These impact areas include: ground water, surface water, aquatic ecology, floodplains, threatened or endangered species, cultural resources, traffic, and environmental justice. For the detailed impact analyses, the reader is referred to the Final EIS on the Web pages listed above under **ADDRESSES.**

Ground Water. Ground water remediation would be implemented under both the on-site and off-site disposal alternatives. Under the on-site and off-site disposal alternatives, supplemental standards would be applied to protect human health. Supplemental standards would include institutional controls to prohibit the use of ground water for drinking water. Under the on-site disposal alternative, the tailings pile would be a continuing source of contamination that could maintain contaminant concentrations at levels above background concentrations in the ground water and, therefore, potentially require the application of supplemental standards and institutional controls in perpetuity to protect human health. Under the off-site disposal alternatives, contaminant concentrations in the ground water, under the Moab milling site, would return to background levels after an estimated 150 years, by which time active ground water remediation would have been completed, and institutional controls would no longer be needed. The tailings pile would not be a continuing source of contamination to ground water at the Moab milling site under the off-site disposal alternative.

However, under the on-site disposal and No Action alternatives, natural basin subsidence could result in permanent tailings contact with the ground water in an estimated 7,000 to 10,000 years, at which time surface water concentrations could temporarily revert to levels that are not protective of aquatic species in the Colorado River.

In addition, under the No Action alternative, ground water beneath the Moab milling site would remain contaminated, would pose an increased risk to human health, and would continue in perpetuity to discharge contaminants to the surface water at concentrations that would not be protective of aquatic species.

Surface Water and Aquatic Ecology. Under the No Action alternative, surface water contamination and nonprotective river water quality would continue in perpetuity. DOE estimates that under all action alternatives, contamination of the Colorado River from ground water discharge would be reduced to levels that would be protective of aquatic species within 5 to 10 years, after implementation of ground water remediation because of the interception and containment of the contaminated ground water plume. DOE also

anticipates that contaminant concentrations in surface water that are protective of aquatic species in the Colorado River could be maintained, under all action alternatives, for the 200- to 1,000-year time frame specified in EPA's ground water standards (40 CFR Part 192). Under the off-site disposal alternative, removal of the pile coupled with the estimated 75 years of active ground water remediation would result in permanent protective surface water quality. Under the on-site disposal alternative, active ground water remediation would continue for up to an estimated 80 years.

Floodplains. A Colorado River 100- or 500-year flood could release additional contamination to ground water and surface water under the on-site disposal or No Action alternatives. However, under the on-site disposal alternative, the increase in ground water and river water ammonia concentrations, due to floodwaters inundating the pile, would be minor, and the impact on river water quality would rapidly decline over an estimated 20-year period. Under the No Action alternative, lesser flood events could also result in the release of contaminated soils to the Colorado River, as sediment runoff. In contrast to the on-site disposal and No Action alternatives, the off-site disposal alternative presents no risk of these recurrences of surface water contamination at the Moab site because the tailings pile would be removed to an area not located in a floodplain.

In accordance with its regulations in 10 CFR Part 1022, DOE has prepared the Floodplain and Wetlands Assessment for Remedial Action at the Moab Site. This assessment and a Floodplain Statement of Findings are appended to the Final EIS.

Threatened or Endangered Species. In compliance with the Endangered Species Act, DOE prepared a Biological Assessment that addressed all alternatives, and USF&WS prepared a Biological Opinion for the Crescent Junction off-site disposal and active ground water remediation alternatives. The Biological Assessment and Biological Opinion are appended to the Final EIS. In its Biological Opinion, USF&WS determined that disposal at the Crescent Junction site and active ground water remediation at the Moab site ''may affect,'' but is ''not likely to adversely affect,'' the threatened bald eagle, the endangered southwestern willow flycatcher, the threatened Mexican spotted owl, the endangered Black-footed ferret, the candidate yellow-billed cuckoo, and the candidate Gunnison sage grouse. In addition, USF&WS determined that there would be no effect for the threatened Jones' cycladenia, the threatened Navajo sedge, and the endangered clay phacelia, as these species are not known to occur in the project areas.

After reviewing the current status of the Colorado River fish, the environmental baseline for the action area, the effects of the proposed action and the cumulative effects, the USF&WS's Biological Opinion concludes that the Crescent Junction and active ground water alternatives are not likely to jeopardize the continued existence of the Colorado pikeminnow, humpback chub, bonytail, and razorback sucker and are not likely to result in destruction or adverse modification of critical habitat. The USF&WS concludes that the proposed action to dispose of tailings (*i.e.*, surface contamination) off site would reduce negative effects associated with the ongoing contamination of the Colorado River near the Moab site and would eliminate the potential for future catastrophic events associated with river flooding and river migration. The proposed action for ground water remediation at the Moab site would address the effects of ground water contaminants impacting endangered fish in the Colorado River. There would be adverse effects associated with the current levels of ground water contamination until ground water remediation is fully implemented, assuming the effects are not minimized by existing interim actions. The USF&WS has determined that the amount of ''take'' that is occurring in the nearshore habitats will not jeopardize the Colorado River fish. ''Take'' is defined by the Endangered Species Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct.'' In its Incidental Take Statement, the USF&WS is allowing incidental take of Colorado River fish associated with exposure to nonprotective concentrations of contaminants in nearshore habitats along the north bank of the Colorado River at and downstream of the Moab site for 10 years from finalization of the Biological Opinion. ''Incidental take'' means that as a result of DOE's actions there will be an allowable ''take'' of protected fish.

Cultural Resources. Only the Moab site and White Mesa Mill site have been field-surveyed; however, cultural resources would probably be adversely affected under all the action alternatives. The numbers of potentially affected cultural resources would vary significantly among the action alternatives. The on-site disposal alternative would have the least effect on cultural resources, potentially affecting 4 to 11 sites eligible for inclusion in the National Register of Historic Places. The White Mesa Mill slurry pipeline alternative would have the greatest adverse effect on cultural resources, potentially affecting up to 121 eligible cultural sites. The Klondike Flats alternative could adversely affect a maximum of 35 (rail) to 53 (pipeline) eligible sites, and the Crescent Junction alternative could adversely affect a maximum of 11 (rail) to 36 (pipeline) eligible sites.

A minimum of 10 to 11 traditional cultural properties would be potentially affected under the White Mesa Mill truck or slurry pipeline alternatives, whereas no such properties would be affected by the other alternatives. (The term ''traditional cultural properties'' can include properties associated with traditional cultural practices, ceremonies, and customs.) Mitigation of the potential impacts to cultural sites and traditional cultural properties under the White Mesa Mill alternative would be extremely difficult given the density and variety of these resources, the importance attached to them by tribal members, and the number of tribal entities that would be involved in consultations.

Traffic. All the proposed action alternatives would result in increased traffic on local roads and US–191. Among the three off-site disposal locations, truck transportation to the White Mesa Mill site would represent the most severe impact to traffic in central Moab, an area that the Utah Department of Transportation currently considers to be highly congested. Transportation of contaminated materials from the Moab milling site to the White Mesa Mill site would result in a 127 percent increase in average annual daily truck traffic through Moab. In contrast, if the tailings were trucked to the Klondike Flats or Crescent Junction sites, or if either the rail or slurry pipeline transportation modes were implemented for any of the off-site disposal locations, there would be only a 7 percent increase in truck traffic through central Moab from shipments of vicinity property materials under all action alternatives, and only a 2 to 3 percent increase from shipments of borrow materials for the on-site disposal alternative or for off-site disposal at the Klondike Flats or Crescent Junction locations. All alternatives would also result in an overall increase in the average annual daily truck traffic on US–191, both north and south of Moab, from shipments of contaminated material and borrow material. These impacts would be most severe with the

off-site truck transportation mode, which would increase average annual daily truck traffic on US–191 by 95 percent for the Klondike Flats or the Crescent Junction alternative and by 65 to 186 percent for the White Mesa Mill alternative, depending on the segment of US–191.

In comparison, the on-site disposal alternative and the rail or pipeline off-site alternatives would increase average annual daily truck traffic on US–191 only by 7 percent. DOE estimates that less than one traffic fatality would occur for all alternatives and transportation modes, with the exception of truck transportation to White Mesa Mill, for which modeling predicts that 1.3 traffic fatalities would occur.

Environmental Justice. Disproportionately high and adverse impacts to minority and low-income populations would occur under the White Mesa Mill off-site disposal alternative (truck or slurry pipeline transportation) as a result of unavoidable adverse impacts to at least 10 to 11 potential traditional cultural properties located on and near the White Mesa Mill site, the proposed White Mesa Mill pipeline route, the White Mesa Mill borrow area, and the Blanding borrow area. Moreover, if the White Mesa Mill alternative were implemented, it is likely that additional traditional cultural properties would be located and identified during cultural studies.

The sacred, religious, and ceremonial sites already identified as traditional cultural properties are associated with the Ute, Navajo, and Hopi cultures and people. Currently, there are no known traditional cultural properties at any other site, although the potential for their being identified during cultural studies and consultations ranges from low to high, depending on the site and mode of transportation. The impacts to all other resource areas analyzed in the EIS (for example, transportation or human health) would not represent a disproportionate adverse impact to minority and low-income populations under any alternative.

Cumulative Impacts. The on-site and off-site disposal locations under consideration are located in rural areas with no other major industrial or commercial centers nearby. No past, present, or reasonably foreseeable future actions are anticipated to result in cumulative impacts when considered with the alternatives assessed in this EIS. However, seasonal tourism in and around Moab, and to a lesser extent at the off-site disposal locations, could have a cumulative impact on traffic congestion in central Moab, especially under the truck transportation mode, in which truck traffic would increase by over 100 percent.

Environmentally Preferred Alternative

DOE has identified off-site disposal at the Crescent Junction site using rail transportation and active ground water remediation as the environmentally preferred alternatives. The Crescent Junction site has the longest (over 170,000 years) isolation period (time it would take for contaminants to reach the first aquifer); the lowest land-use conflict potential; and the greatest distance from the public. Rail transportation is environmentally preferred over truck because of fewer conflicts with existing highway uses, lower emissions and fuel demands, and reduced likelihood of wildlife impacts; and more favorable than slurry pipeline because of the significantly reduced water demand and reduced impact area; a rail line is already available, and a slurry pipeline would need to be constructed.

In comparison, although the Klondike Flats site provides significant isolation (over 25,000 years) from ground water, use of the site would require construction of a new public access road parallel to Blue Hills Road and a 1- to 4-mile truck haul road that would traverse the steep bluffs (20 to 30 percent grade) north of Blue Hills Road. The truck haul road would require radiological controls from a rail spur to the disposal cell site. These actions would be adjacent and visible to public access, could temporarily adversely affect recreational use of the local area, and could cause visual impacts to users of the northern areas of Arches National Park.

Of the three alternative off-site locations, the White Mesa Mill alternative would require the greatest distance for transportation; would have the greatest potential for adversely affecting cultural resources and traditional cultural properties at the site and along a slurry pipeline corridor; and would have the shortest isolation period (3,600 to 7,700 years to reach springs and seeps). Implementation of that alternative using truck transportation would cause extensive adverse traffic impacts in the cities of Moab, Monticello, and Blanding.

Active ground water remediation is environmentally preferred over the No Action alternative because the No Action alternative would not mitigate or eliminate the ongoing impacts to surface water quality and, subsequently, to aquatic species, and in the opinion of the USF&WS would violate the Endangered Species Act by jeopardizing the continued existence of protected fish species in the Colorado River. Whereas, as discussed in the section on threatened or endangered species, active ground water remediation would mitigate ongoing impacts from past mill operations and, combined with off-site disposal, would ultimately eliminate future risks to the Colorado River and aquatic species.

Comments on the Final EIS

DOE received comments on the Moab Final EIS from the State of Utah Representative Jim Matheson, EPA, Jean Binyon on behalf of the Utah Chapter Sierra Club, Jerry McNeely on behalf of the citizens of Grand County, Utah, and the Grand County Council, and Susan Breisch of San Diego, California. All commentors expressed support for DOE's preferred alternative identified in the Final EIS.

EPA stated that the Crescent Junction disposal alternative ''has the least environmental and cultural impact of any of the alternatives considered. The stable geologic and surface conditions at the Crescent Junction alternative will provide isolation of these tailings without public health risks for the long-term.'' And, ''* * * we appreciate that DOE has fully considered the benefits of the Crescent Junction site, using rail transport, which should provide a secure geologic setting that offers the best opportunity for long-term public health and environmental protection.''

Jean Binyon commented, ''You are to be congratulated on the careful consideration and thoughtful responses you gave to the large volume of comments received.'' Jerry McNeely commented, ''The Department of Energy's position in the final EIS is evidence that the DOE has listened to our concerns and concurs with us.''

Susan Breisch commented, ''With few exceptions, the document * * * was clear for a general reader.'' Ms. Breisch, however, questioned a reference in the EIS to a one time $3,800 payment by DOE as a water depletion fee. As explained in more detail in Section 4.1.6.1 of the Final EIS, in accordance with the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin, activities that withdraw water from the Colorado River make a one time contribution of $10 per acre-foot of water used based on the average annual depletion during a project. This fee helps support the activities necessary to recover endangered fish in the Colorado River. The $3,800 contribution is an estimate based on the projected water use associated with the conceptual design of the preferred alternatives

assessed in the Final EIS. DOE will work closely with the USF&WS during the finalization of the project design and the determination of project water needs. Subsequently, DOE's actual contribution amount will be determined and the appropriate funding transferred to the Recovery Program.

Decision

DOE will remove RRM from the Moab mill tailings site and vicinity properties located within the vicinity property inclusion area identified in the Final EIS and use the existing rail lines and extensions to existing sidings to ship the materials to a newly constructed disposal cell at Crescent Junction. Truck shipments will be necessary for some oversized material. Borrow materials needed to construct the disposal cell will be extracted from one or more of the borrow area sites assessed in the Final EIS. Disposal cell design features will be developed after issuance of this ROD, published in a Remedial Action Plan, and approved by the NRC.

DOE will also continue and expand as necessary its ongoing active remediation of contaminated ground water at the Moab site. As an interim action, DOE began limited ground water remediation that involves extraction of contaminated ground water from on-site remediation wells and evaporation of the extracted contaminated water in a lined pond. An expanded ground water remediation program may use evaporation or one or more of the other treatment technologies assessed in the Final EIS to treat or dispose of contaminated ground water. Final selection of a treatment technology will be documented in the Ground Water Compliance Action Plan that will be developed after the Remedial Action Plan.

Basis for the Decision

DOE considered the analyses provided in the Final EIS, including the Floodplain and Wetlands Assessment, and Biological Assessment and Biological Opinion appended to the EIS; the costs associated with the alternatives; significant input from the 12 cooperating agencies; and comments provided by other agencies, governors, state and Federal senators and representatives, and the public. DOE selected off-site disposal over on-site disposal because off-site disposal offers greater long-term isolation of the mill tailings, greater protection of the environment, and greater reduction in the long-term risk to the health and safety of the public. In addition, there are fewer uncertainties and differing opinions regarding the ability of an off-site disposal cell to meet regulatory performance requirements for the requisite 200-to 1,000-year performance period. The principal areas of uncertainty or controversy concerning on-site disposal that were discussed in detail in the Final EIS include tailings pile characteristics, ground water modeling, compliance standards, river migration, and future flooding. Off-site disposal eliminates or reduces these on-site disposal uncertainties.

As discussed in the above section on the Environmentally Preferred Alternative, the Crescent Junction site was selected because it will provide: The greatest isolation for the uranium mill tailings; the lowest land-use conflict potential; and the greatest distance from the public; and therefore, the safest site with the lowest long-term human health risks. Although the costs for the Crescent Junction site are expected to be slightly more than those for the Klondike Flats site, because of the increased transportation distance, DOE considered the decreased long-term risks provided by the Crescent Junction site to justify the selection of Crescent Junction. The higher cost of the White Mesa Mill alternative and the increased impacts associated with its implementation led DOE not to choose it.

Rail transportation was selected as the principal transportation mode because it will eliminate the significant traffic conflicts of truck transport, provide lower worker and public exposures to contaminated material than truck transport, and avoid the consumptive water needs of a slurry pipeline, and the increased costs and complexities of additional tailings drying that would be required before final placement in the disposal cell. In addition, the use of a virtually dedicated rail corridor that is less subject to traffic or weather delays will provide DOE better overall schedule control.

Active ground water remediation was selected because it is the preferred method by which ongoing impacts (resulting from the past operations of the uranium mill) to the Colorado River and aquatic organisms, including four species of endangered fish, can be mitigated in the near term and ultimately eliminated. The No Action alternative for ground water would not provide near-term or long-term protection of the environment and, according to the USF&WS, would jeopardize the continued existence of protected species in the Colorado River.

Mitigation

On the basis of the analyses conducted for the Final EIS, DOE will adopt all practicable measures identified in the Final EIS to avoid or minimize adverse environmental impacts that may result from removing contaminated material from the Moab milling site and vicinity properties and transporting these materials to a new disposal cell constructed at Crescent Junction. Best Management Practices will be employed to control access to contaminated areas, minimize worker and public exposures to contaminated materials, minimize the extent of surface disturbance, and reclaim and revegetate disturbed lands in as timely a manner as is feasible. A storm water management program will be developed that complies with all Utah Pollutant Discharge Elimination System general permit requirements, and U.S. Army Corps of Engineers permit requirements, to mitigate runoff, using management measures such as berms, drainage ditches, sediment traps, contour furrowing, retention ponds, and check dams. A spill prevention and contingency plan will be developed to minimize the potential for spills of hazardous material, including provisions for storage of hazardous materials, refueling of construction equipment within the confines of protective berms, and notification and activation protocols. A dust control system will be implemented, following provisions in the Fugitive Dust Control Plan for the Moab, Utah, UMTRA Project Site, which complies with State of Utah requirements specified in the Utah Administrative Code, ''Emission Standards: Fugitive Emissions and Fugitive Dust,'' and may include application of liquid or solid surfactants (*e.g.*, sodium or magnesium chloride or water) as necessary to control fugitive dust. Because of the proximity of the Moab site to Arches National Park, activities near the site periphery will be minimized, and lighting will be pointed downward and use light shields to limit the amount of light beyond the site boundary. To minimize potential adverse impacts to buried archaeological or cultural resources that could be discovered during site activities, site workers will receive training on the need to protect cultural resources and the legal consequences of disturbing cultural resources.

DOE will develop a Remedial Action Plan, Ground Water Compliance Action Plan, and other planning and monitoring documents for remediation of contaminated materials. These planning and monitoring documents will provide the engineering reclamation design and incorporate a ground water compliance strategy and corrective actions. These documents

will also integrate mitigation measures into the remediation strategy to reduce or mitigate the impacts of the proposed actions and, where appropriate, identify the mechanisms by which the success of mitigative actions will be evaluated and reported.

In addition, the ongoing impacts to the Colorado River and aquatic organisms that are the result of past milling operations will be mitigated by active ground water remediation until natural processes have reduced the levels of contaminants such as ammonia to concentrations that are below the relevant toxicity standards.

In granting an incidental take for a period of 10 years, following the USF&WS Biological Opinion, during which time DOE will implement its ground water remediation program, the USF&WS requested, and DOE will implement, the following reasonable and prudent measures to minimize the impacts of incidental take of the endangered Colorado River fishes: (1) Monitor backwater habitats near the Moab site for any indication of fish being affected by surface water contamination; (2) evaluate the effectiveness of DOE's initial action (diluting non-protective contaminant concentrations in backwater habitats by pumping clean river water); (3) address uncertainties associated with the ground water remediation program; (4) reduce effects of surface water contamination in habitats along the south bank of the Colorado River, if necessary; and (5) reduce the effects of entrainment at all project pumping sites.

Further, in accordance with the requirements of the Biological Opinion, and consistent with Council on Environmental Quality's regulations in 40 CFR 1505.2, to monitor the success of the active ground water remedial action and enforce the provisions of the Biological Opinion, DOE, in coordination with USF&WS, will develop a Water Quality Study Plan within 18 months of the finalization of this ROD that evaluates and determines: (1) The effectiveness of ground water remediation efforts; (2) the validity of the ground water to surface water dilution factor; (3) compliance with achieving the target goal of acute ammonia standards; (4) the validity of the assumption that by reducing concentrations of ammonia, the other constituents of concern (manganese, sulfate, uranium, copper, and selenium) will also be reduced to protective levels; (5) the requirements and schedule for DOE's reporting to the USF&WS; and (6) if refinement of the ground water conceptual model is necessary.

Issued in Washington, DC, this 14th day of September 2005.

James A. Rispoli,

Assistant Secretary for Environmental Management.

[FR Doc. 05–18815 Filed 9–20–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–126–000 et al.]

Sithe Energies, Inc., LLC, et al.; Electric Rate and Corporate Filings

September 13, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sithe Energies, Inc., Sithe Energies U.S.A., Inc., Sterling Power, Ltd., Sterling Power Partners, L.P., Seneca Power Corporation, Seneca Power Partners, L.P., and Alliance Energy Group LLC

[Docket No. EC05–126–000]

Take notice that on September 7, 2005, Sithe Energies, Inc. (Sithe), Sithe Energies U.S.A., Inc. (Sithe U.S.A.), Seneca Power Corporation, Seneca Power Partners, L.P. (the Seneca Partnership), Sterling Power, Ltd., Sterling Power Partners, L.P. (the Sterling Partnership), and Alliance Energy Group LLC (Alliance Energy) (collectively, Applicants) submitted an amendment to an application filed on August 15, 2005 requesting authorization pursuant to section 203 of the Federal Power Act for Alliance Energy to acquire all of the interests in the Seneca Partnership and Sterling Partnership directly and indirectly owned by Sithe and Sithe U.S.A. (the Transaction). Applicants state that the amendment clarifies that Alliance Energy may acquire the Sithe's interests in the Seneca and Sterling Partnerships through its wholly-owned, Alliance Energy, New York LLC (Alliance Energy NY), in which case Alliance Energy's interests in the partnerships would be held indirectly through Alliance Energy NY.

Comment Date: 5 p.m. Eastern Time on September 21, 2005.

2. Twelvepole Creek, LLC; American Electric Power Service Corporation; and Appalachian Power Company

[Docket No. EC05–134–000]

Take notice that on September 8, 2005, Twelvepole Creek, LLC (Twelvepole Creek) and American Electric Power Service Corporation, on behalf of its electric utility operating company affiliate Appalachian Power Company (APCo) (collectively, Applicants), submitted pursuant to section 203 of the Federal Power Act, a joint application seeking authorization for the sale of jurisdictional facilities. Applicants state that the application requests Commission authorization for the transfer by Twelvepole Creek to APCo jurisdictional facilities associated with the Ceredo generating station located in Ceredo, Wayne County, West Virginia, and a related interconnection agreement.

Comment Date: 5 p.m. Eastern Time on October 4, 2005.

3. TransCanada PipeLines Limited 779540 Alberta Ltd.; TransCanada PipeLine USA Ltd.; TransCanada OSP Holdings Ltd.; and TCPL Power Ltd.

[Docket No. EC05–135–000]

Take notice that on September 7, 2005, TransCanada PipeLines Limited (TCLP) 779540 Alberta Ltd. (Dissolve Co.), TransCanada PipeLine USA Ltd (TCPL USA), TransCanada OSP Holdings Ltd (TC OSP) and TCPL Power Ltd (TCPL Power) (collectively, Applicants) filed an application under section 203 of the Federal Power Act requesting authorization for the dissolution of Dissolve Co, the transfer of shares of TC OSP from TCPL to TCPL USA and the transfer of shares of TCPL Power to TC OSP in order to effect a corporate reorganization.

Comment Date: 5 p.m. Eastern Time on September 28, 2005.

4. Entergy Services, Inc.

[Docket No. EL05–149–000]

Take notice that on September 2, 2005, Entergy Services, Inc., on behalf of the Entergy Operating Companies (collectively, Entergy), pursuant to Commission Rule 207, 18 CFR 385.207 (2005), petitioned for an issuance of a Declaratory Order regarding Entergy's obligation to pay third party generators for reactive power.

Entergy states that copies of this filing have been served on all customers under Entergy's Open Access Transmission Tariff and on Entergy's retail regulators.

Comment Date: 5 p.m. Eastern Time on October 3, 2005.

5. Southwest Transmission Cooperative, Inc.

[Docket No. NJ05–6–000]

Take notice that on September 1, 2005, Southwest Transmission Cooperative, Inc. (SWTC) tendered for

filing its revised Open Access Transmission Tariff (OATT) in order to update its OATT and to comply with Order No. 2003–C regarding large generator interconnection, and to reestablish the compliance of its OATT with the Commission's safe harbor and reciprocity standards.

Comment Date: 5 p.m. Eastern Time on October 3, 2005.

6. Pacific Crest Power, LLC and Ridgetop Energy, LLC

[Docket Nos. QF92–55–007 and QF94–50–007]

Take notice that on September 1, 2005, Pacific Crest Power, LLC and Ridgetop Energy, LLC, filed with the Commission an application for recertification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on September 28, 2005.

7. Cameron Ridge LLC

[Docket No. QF98–41–007]

Take notice that on September 1, 2005, Cameron Ridge LLC, filed with the Commission an application for recertification of a facility as a qualifying small power production facility pursuant to 18 CFR 292.207(b) of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on September 28, 2005.

8. Southwest Power Pool, Inc.

[Dockets Nos. RT04–1–015 and ER04–48–015]

Take notice that on September 7, 2005, Southwest Power Pool, Inc. (SPP) submitted an errata to Attachment AJ filing to the SPP Open Access Transmission Tariff submitted on August 26, 2005 and on September 12, 2005, SPP submitted another errata to the independent Market Monitoring Services Agreement originally submitted on August 26, 2005. SPP requests an effective date of July 1, 2005 for its filings.

SPP states that a copy of this filing has been served on all persons on the official service list, as well as all state commissions. SPP further states the filing has been posted electronically on SPP's Web site at *http://www.spp.org.*

Comment Date: 5 p.m. Eastern Time on September 20, 2005.

9. Tennessee Valley Authority

[Docket No. TX05–1–004]

Take notice that on September 7, 2005, Tennessee Valley Authority (TVA) submitted a compliance filing pursuant to Commission Orders April 14 and August 3, 2005, addressing interconnections flow service agreement between TVA and East Kentucky Power Cooperative, Inc.

Comment Date: 5 p.m. Eastern Time on October 7, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5138 Filed 9–20–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 15, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER02–257–005.

Applicants: Northern Iowa Windpower, LLC.

Description: Northern Iowa Windpower, LLC submits revised tariff sheets to its FERC Electric Tariff, First Revised Volume 1, Original Sheet Nos. 1–5.

Filed Date: 09/06/2005.

Accession Number: 20050912–0035.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER04–663–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., submits its Refund Report in compliance with FERC's 11/2/04 Letter Order.

Filed Date: 09/06/2005.

Accession Number: 20050912–0039.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1076–001, ER97–2846–006.

Applicants: Carolina Power & Light Company; Florida Power. Corporation aka Progress Energy Florida, Inc.

Description: Carolina Power & Light Co. aka Progress Energy Carolinas, Inc. submits its response to portions of the August 5, 2005 Letter that pertains to the market-based rate tariff filed. On September 6, 2005 a revision to market-based rate filed under accession No. 20050909–0032.

Filed Date: 09/06/2005.

Accession Number: 20050909–0032.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1082–001.

Applicants: Carolina Power & Light Company.

Description: Carolina Power & Light Co. aka Progress Energy Carolinas Inc., submits a revised Cost-Based Wholesale Power Sales Tariff in response to the questions raised in the 8/5/05 letter re its previously filed cost-based tariff re Carolina Power & Light Co.

Filed Date: 09/06/2005.

Accession Number: 20050909–0033.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1085–001; ER04–458–008.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits proposed revisions to their Open Access Transmission and Energy Markets Tariff.

Filed Date: 09/06/2005.

Accession Number: 20050912–0030.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1105–002.

Applicants: LP and T Energy, LLC.

Description: LP and T Energy, LLC submits a second amended filing of Application for Order Accepting Market Based Rate Tariff; Original Sheet 4.

Filed Date: 09/06/2005.

Accession Number: 20050909–0029.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1238–002.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Co. submits a revised copy of the Interconnection Agreement designated as First Revised Service Agreement 244 which was inadvertently omitted.

Filed Date: 09/02/2005.

Accession Number: 20050912–0033.

Comment Date: 5 pm Eastern Time on Friday, September 23, 2005.

Docket Numbers: ER05–1426–000.

Applicants: Avista Corporation.

Description: Avista Corp requests that FERC disclaim jurisdiction over the contracts between Public Utility District #2 of Grant County, Washington and Avista. September 8, 2005 errata to this filing included under accession No. 20050908–5064.

Filed Date: 09/02/2005.

Accession Number: 20050907–0060.

Comment Date: 5 pm Eastern Time on Friday, September 23, 2005.

Docket Numbers: ER05–1442–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an executed interconnection service agreement with Criterion Power Partners, LLC and Allegheny Power.

Filed Date: 09/06/2005.

Accession Number: 20050908–0119.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1443–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc. as agent for Alabama Power Co., submits the First Revised Service Agreement 370 under FERC Electric Tariff, Fourth Revised Volume No. 5.

Filed Date: 09/06/2005.

Accession Number: 20050908–0117.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1444–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc. submits an unexecuted Large Generator Interconnection Agreement among Matton Wind Farm LLC, the Midwest ISO and Central Illinois Public Service Co. September 13, 2005 errata to this filing included under accession No. 20050915–0112.

Filed Date: 09/06/2005.

Accession Number: 20050908–0118.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1447–000.

Applicants: Salmon River Electric Cooperative, Inc.

Description: Salmon River Electric Coop, Inc. advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility.

Filed Date: 09/06/2005.

Accession Number: 20050909–0036.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Docket Numbers: ER05–1448–000.

Applicants: Wells Rural Electric Company.

Description: Wells Rural Electric Co. advises that due to amendments to section 201(f) of the Federal Power Act, it is no longer a public utility.

Filed Date: 09/06/2005.

Accession Number: 20050909–0035.

Comment Date: 5 pm Eastern Time on Tuesday, September 27, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and §385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5139 Filed 9–20–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–0003, FRL–7972–3]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Background Checks for Contractor Employees (Renewal), EPA ICR Number 2159.02, OMB Control Number 2030–0043

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 09/30/2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before October 21, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2005–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail

Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4366; fax number: (202) 565–2475; e-mail address: *schaffer.paul@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On June 10, 2005 (70 FR 33898), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OEI–2005–0003, which is available for public viewing in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Titles: Background Checks for Contractor Employees (Renewal).

Abstract: EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials or hazardous chemicals that may potentially affect communities and the surrounding environment. Releases may be accidental, deliberate, or may be caused by natural disasters. Emergency responders are available 24 hours-a-day to an incident, and respond with necessary personnel and equipment to eliminate dangers to the public and environment. Contractors responding to any of these types of incidents are responsible for conducting background checks and applying Government-established suitability criteria in determining whether employees are acceptable to perform on given sites or on specific projects prior to contract employee performance. The information to be collected under the ICR for Background Checks for Contractor Employees covers citizenship or valid visa, criminal convictions, weapons offenses, felony convictions, parties prohibited from receiving federal contracts. The Contractor shall maintain records of all background checks.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are contractors involved with Emergency Response that have significant security concerns, as determined by the Contracting Officer on a case-by-case basis, to provide qualified personnel that meet the background check requirements developed by EPA.

Estimated Number of Respondents: 1,000.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,000.

Estimated Total Annual Cost: $179,000, which includes $0 annual capital/startup and O&M costs, and $179,000 annual labor costs.

Changes in the Estimates: There is a no change in the number of hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: September 13, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–18826 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Numbers OECA–2005–0064 to 0069, 0070 to 0072, 0075 to 0080, and 0106, FRL–7972–4]

Agency Information Collection Activities: Request for Comments on Sixteen Proposed Information Collection Requests (ICRs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following sixteen existing, approved, continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICRs. Before

submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described under **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before November 21, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, section I.B.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, section II.C.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

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

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's standards are displayed at 40 CFR part 9.

B. Public Dockets

EPA has established official public dockets for the ICRs listed under **SUPPLEMENTARY INFORMATION**, section II.B. The official public docket for each ICR consists of the documents specifically referenced in the ICR, any public comments received, and other information related to each ICR. The official public docket for each ICR is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514. An electronic version of the public docket for each ICR is available through EPA Dockets (EDOCKET) at: *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, to submit or to view public comments, to access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to the listed ICRs above should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov./edocket*.

II. ICRs To Be Renewed

A. For All ICRs

The listed ICRs address Clean Air Act information collection requirements in standards (*i.e.*, regulations) which have mandatory recordkeeping and reporting requirements. Records collected under the New Source Performance Standards (NSPS) must be retained by the owner or operator for at least two years and the records collected under the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required collections consist of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Requests (ICRs) listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

B. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following sixteen continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS for Petroleum Dry Cleaners ((40 CFR Part 60, Subpart JJJ); Docket ID Number OECA–2005–0066; EPA ICR Number 0997.08; OMB Control Number 2060–0079; expiration date June 30, 2006.

(2) NSPS for Large Appliance Surface Coating (40 CFR Part 60, Subpart SS); Docket ID Number OECA–2005–0075; EPA ICR Number 0659.10; OMB Control Number 2060–0108; expiration date June 30, 2006.

(3) NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); Docket ID Number OECA–2005–0065; EPA ICR Number 1062.09; OMB Control Number 2060–0122; June 30, 2006.

(4) NESHAP for Clay Ceramics Manufacturing (40 CFR Part 63, Subpart KKKKK); Docket ID Number OECA–

2005–0067; EPA ICR Number 2023.03; OMB Control Number 2060–0513; expiration date June 30, 2006.

(5) NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB); Docket ID Number OECA–2005–0077; EPA ICR Number 1901.03; OMB Control Number 2060–0424; expiration date June 30, 2006.

(6) NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE); Docket ID Number OECA–2005–0074; EPA ICR Number 0649.09; OMB Control Number 2060–0106; expiration date June 30, 2006.

(7) NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA); Docket ID Number OECA–2005–0078; EPA ICR Number 1900.03; OMB Control Number 2060–0423; expiration date June 30, 2006.

(8) NESHAP for Integrated Iron and Steel Manufacturing (40 CFR Part 63, Subpart FFFFF); Docket ID Number OECA–2005–0080; EPA ICR Number 2003.03; OMB Control Number 2060–0517; expiration date June 30, 2006.

(9) Federal Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR 62, Subpart FFF); Docket ID Number OECA–2005–0079; EPA ICR Number 1847.04; OMB Control Number 2060–0181; expiration date June 30, 2006.

(10) NSPS for Synthetic Fiber Production Facilities (40 CFR Part 60, Subpart HHH); Docket ID Number OECA–2005–0068; EPA ICR Number 1156.10; OMB Control Number 2060–0059; expiration date June 30, 2006.

(11) NESHAP for Semiconductor Manufacturing (40 CFR Part 63, Subpart BBBBB); Docket ID Number OECA–2005–0069; EPA ICR Number 2042.03; OMB Control Number 2060–0519; expiration date June 30, 2006.

(12) NSPS for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (40 CFR Part 60, Subpart Da); Docket ID Number OECA–2005–0064; EPA ICR Number 1053.08; OMB Control Number 2060–0023; expiration date July 31, 2006.

(13) NESHAP for Hydrochloric Acid Production (40 CFR Part 63, Subpart NNNNN); Docket ID Number OECA–2005–0070; EPA ICR Number 2032.04; OMB Control Number 2060–0529; expiration date July 31, 2006.

(14) NESHAP for Mercury (40 CFR Part 61, Subpart E); Docket ID Number OECA–2005–0071; EPA ICR Number 0113.09; OMB Control Number 2060–0097; expiration date August 31, 2006.

(15) NESHAP for Secondary Aluminum Production (40 CFR Part 63, Subpart RRR); Docket ID Number OECA–2005–0072; EPA ICR Number 1894.05; OMB Control Number 2060–0433; expiration date September 30, 2006.

(16) NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR Part 63, Subpart II); Docket ID Number OECA–2005–0076; EPA ICR Number 1712.05; OMB Control Number 2060–0030; expiration date September 30, 2006.

C. Contact Individuals for ICRs

(1) NSPS for Petroleum Dry Cleaners (40 CFR Part 60, Subpart JJJ); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 0997.08; OMB Control Number 2060–0108; expiration date June 30, 2006.

(2) NSPS for Large Appliance Surface Coating (40 CFR Part 60, Subpart SS); Leonard Lazarus of the Office of Compliance at (202) 564–6369 or via e-mail to: *lazarus.leonard@epa.gov;* EPA ICR Number 0659.10; OMB Control Number 2060–0108; expiration date June 30, 2006.

(3) NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); Dan Chadwick of the Office of Compliance at phone number (202) 564–7054, fax number (202) 564–0050, or via e-mail to *chadwick.dan@epa.gov;* EPA ICR Number 1062.09; OMB Control Number 2060–0122; expiration date July 31, 2006.

(4) NESHAP for Clay Ceramics Manufacturing (40 CFR Part 63, Subpart KKKKK); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 2023.03; OMB Control Number 2060–0513; expiration date June 30, 2006.

(5) NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB); Gregory Fried of the Office of Compliance at (202) 564–7016 or via e-mail to: *fried.gregory@epa.gov;* EPA ICR Number 1901.03; OMB Control Number 2060–0424; expiration date June 30, 2006.

(6) NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE); Leonard Lazarus of the Office of Compliance at (202) 564–6369 or via e-mail to: *lazarus.leonard@epa.gov;* EPA ICR Number 0649.09; OMB Control Number 2060–0106; expiration date June 30, 2006.

(7) NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA); Gregory Fried of the Office of Compliance at (202) 564–7016 or via e-mail to: *fried.gregory@epa.gov;* EPA ICR Number 1900.03; OMB Control Number 2060–0423; expiration date June 30, 2006.

(8) NESHAP for Integrated Iron and Steel Manufacturing (40 CFR Part 63, Subpart FFFFF); contact María Malavé in the Office of Compliance at (202) 564–7027 or via e-mail to: *malave.maria@epa.gov;* EPA ICR Number 2003.03; OMB Control Number 2060–0517; expiration date June 30, 2006.

(9) Federal Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR 62, Subpart FFF); Gregory Fried of the Office of Compliance at (202) 564–7016 or via e-mail to: *fried.gregory@epa.gov;* EPA ICR Number 1847.04; OMB Control Number 2060–0181; expiration date June 30, 2006.

(10) NSPS for Synthetic Fiber Production Facilities (40 CFR Part 60, Subpart HHH); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 1156.10; OMB Control Number 2060–0059; expiration date June 30, 2006.

(11) NESHAP for Semiconductor Manufacturing (40 CFR Part 63, Subpart BBBBB); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 2042.03; OMB Control Number 2060–0519; expiration date June 30, 2006.

(12) NSPS for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (40 CFR Part 60, Subpart Da); Dan Chadwick of the Office of Compliance at phone number (202) 564–7054, fax number (202) 564–0050, or via e-mail to *chadwick.dan@epa.gov;* EPA ICR Number 1053.08; OMB Control Number 2060–0023; expiration date July 31, 2006.

(13) NESHAP for Hydrochloric Acid Production (40 CFR Part 63, Subpart NNNNN); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 2032.04; OMB Control Number 2060–0529; expiration date July 31, 2006.

(14) NESHAP for Mercury (40 CFR Part 61, Subpart E); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA

ICR Number 0113.09; OMB Control Number 2060–0097; expiration date August 31, 2006.

(15) NESHAP for Secondary Aluminum Production (40 CFR Part 63, Subpart RRR); Learia Williams of the Office of Compliance at (202) 564–4113, fax number: (202) 564–4113 or via e-mail: *williams.learia@epa.gov;* EPA ICR Number 1894.05; OMB Control Number 2060–0433; expiration date September 30, 2006.

(16) NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR Part 63, Subpart II); Leonard Lazarus of the Office of Compliance at (202) 564–6369 or via e-mail to: *lazarus.leonard@epa.gov;* EPA ICR Number 1712.05; OMB Control Number 2060–0030; expiration date September 30, 2006.

D. Information for Individual ICRs

(1) NSPS for Petroleum Dry Cleaners (40 CFR Part 60, Subpart JJJ); EPA ICR Number 0997.08; OMB Control Number 2060–0108; expiration date June 30, 2006.

Affected Entities: Petroleum dry cleaning facilities.

Abstract: The New Source Performance Standards (NSPS) for the Petroleum Dry Cleaning Industry (40 CFR Part 60, Subpart JJJ) were proposed on December 14, 1982, and promulgated on September 21, 1984. These standards apply to the owners or operators of petroleum dry cleaning facilities constructed, reconstructed, or modified after December 14, 1982, whose total manufacturer's rated dryer capacity is equal to or greater than 38 kilograms (84 pounds).

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart JJJ. In general, all NSPS standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NSPS.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 18 with 93 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 1,483 hours. On average, each respondent reported once per year and 16 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(2) NSPS for Large Appliance Surface Coating (40 CFR Part 60, Subpart SS); EPA ICR Number 0659.10; OMB Control Number 2060–0108; expiration date June 30, 2006.

Affected Entities: Large appliance surface coating facilities.

Abstract: The New Source Performance Standards (NSPS) for Large Appliance Surface Coating were promulgated on October 27, 1982. Respondents are the owners or operators of large appliance surface coating facilities. The standards apply to each large appliance surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after December 24, 1980.

The affected entities are subject to the General Provisions of NSPS at 40 CFR part 60, subpart A which apply to all NSPS sources. Owners or operators of the affected facilities described must make initial reports when a source becomes subject; conduct and report on performance tests; demonstrate and report on continuous monitor performance; and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are also required. These notifications, reports, and records are essential in determining compliance, and are required, in general, of all sources subject to NSPS.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 72 with 1,044 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 29,564 hours. On average, each respondent reported 15 times per year and 28 hours were spent preparing each response. The total annualized cost was $5,000, which was comprised of maintenance costs of $5,000. There were no capital/startup costs in the previous ICR.

(3) NSPS for Coal Preparation Plants (40 CFR Part 60, Subpart Y); EPA ICR Number 1062.07; OMB Control Number 2060–0122; June 30, 2006.

Affected Entities: Coal Preparation Plants not including underground mining operations.

Abstract: The New Source Performance Standards (NSPS) for 40 CFR part 60, subpart Y was proposed on October 24, 1974 and promulgated on January 15, 1976.

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes to the General Provisions specified at 40 CFR part 60, subpart Y. In general, all New Source Performance Standards (NSPS) require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any start-up, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

Burden Statement: The estimated number of respondents for this information collect was 616 with 1,232 responses. The annual industry recordkeeping and reporting burden for this collection of information was 17,162 hours. Each respondent provided two responses per year and an average 14 hours were spent preparing each response. The total annual cost for this ICR was $22,000 which was comprised entirely of operation and maintenance costs (no capital/startup costs).

(4) NESHAP for Clay Ceramics Manufacturing (40 CFR Part 63, Subpart KKKKK); EPA ICR Number 2023.03; OMB Control Number 2060–0513; expiration date June 30, 2006.

Affected Entities: Clay ceramics manufacturing facilities.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Clay Ceramics Manufacturing (40 CFR Part 63, Subpart KKKKK) were proposed on July 22, 2002, and promulgated on May 16, 2003. These standards apply to the owners or operators of any new and existing clay ceramic manufacturing facilities. Clay ceramic facilities manufacture pressed floor tile, pressed wall tile, other pressed tile, or sanitary ware (*e.g.*, sinks and toilets).

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart KKKKK. Respondents must submit one-time notification of applicability and reports on initial performance test results, implement a startup, shutdown, and malfunction plan (SSMP), semiannual reports of any event where the plan was not followed, semiannual reports for periods of emission limitation deviations, also develop and implement an operation, maintenance, and monitoring plan covering each affected source and emission control device.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was three with 16 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 185 hours. On average, each respondent reported five times per year and 12 hours were spent preparing each response. The total annualized cost was $2,000, which was comprised of no capital/startup costs, and operation and maintenance costs of $2,000.

(5) NSPS for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 (40 CFR Part 60, Subpart BBBB), EPA ICR Number 1901.03, OMB Control Number 2060–0424, expiration date June 30, 2006.

Affected Entities: Small municipal waste combustion units.

Abstract: The New Source Performance Standard (NSPS) for Emission Guidelines and Compliance Times for Small Municipal Waste Combustion Units Constructed on or Before August 30, 1999 were promulgated on December 6, 2000 (65 FR 76378).

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart BBBB. Owners or operators are required to conduct initial compliance testing and continuous monitoring or annual retesting. Owners or operators of small municipal waste combustors (MWCs) are required to submit an initial compliance report for all regulated pollutants and parameters. Owners or operators of small MWC units are also required to submit an annual report for all regulated pollutants and parameters that summarizes data collected for all pollutants and operating parameters regulated under the standard. The annual report includes the highest emission level experienced during the annual test or recorded using a continuous emission monitoring system, the load level, control device inlet temperature, and opacity measurements. If the emission level recorded for any of these pollutants shows emissions above the emission limit for the pollutant, or a calculated carbon injection rate below the carbon injection rate established during the mercury or dioxin/furan annual retest, then the owner or operator is required to submit a semiannual report for the calendar half during which the test was conducted or data were collected. The report must include supporting data and an explanation for the exceedance(s).

Owners or operators are also required to keep records of the following information: (1) Employees names and dates of their initial and annual review of the site-specific operating manual; (2) emission rates and CEMS parameters for nitrogen oxides, sulfur dioxides, carbon monoxide, oxygen, carbon dioxide, and opacity; (3) continuous measurements of small MWC unit load and PM control device temperature, and computation of average emissions and operating parameters; (4) the date and operating parameters of any opacity level exceedances, with reasons and a description of corrective action; (5) results of daily sulfur dioxide, nitrogen oxide, and carbon monoxide CEMS drift tests and quarterly accuracy assessments; (6) records of initial performance tests and all annual performance retests for compliance with particulate matter, dioxin/furan, hydrochloric acid, cadmium, lead, and mercury limits; and (7) records of periodic testing for fugitive ash emissions.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 39 with 416 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 186,374 hours. On average, each respondent reported 11 times per year and 4,779 hours were spent preparing each response. The total annualized cost was $3,338,000, which was comprised of capital/startup costs of $2,800,000 and operation and maintenance costs of $538,000.

(6) NSPS for Metal Furniture Coating (40 CFR Part 60, Subpart EE); EPA ICR Number 0649.09; OMB Control Number 2060–0106; expiration date June 30, 2006.

Affected Entities: Metal furniture coating facilities.

Abstract: The New Source Performance Standards for Metal Furniture Coating were promulgated on October 29, 1982. The standards apply to each metal furniture coating operation in which organic coatings are applied (greater than 3,842 liters of coating per year), commencing construction, modification or reconstruction after November 28, 1980.

The affected entities are subject to the General Provisions of the New Source Performance Standards (NSPS) at 40 CFR part 60, subpart A that apply to all NSPS sources. These requirements include recordkeeping and reporting for startup, shutdown, malfunctions, and semiannual reporting. Exceptions to the General Provisions for this source category are delineated in the standard and include initial notifications to the Agency for new, reconstructed and existing affected entities. Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 397 with 1,110 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 73,181 hours. On average, each respondent reported approximately 2.8 times per year and 66 hours were spent preparing each response. The total annualized cost was $837,000, which was comprised of capital/startup costs of $114,000 and operation and maintenance costs of $723,000.

(7) NSPS for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA), EPA ICR Number 1900.03, OMB Control Number 2060–0423, expiration date June 30, 2006.

Affected Entities: Small municipal waste combustors (MWC).

Abstract: The New Source Performance Standards (NSPS) for Small Municipal Waste Combustors (40 CFR Part 60, Subpart AAAA) were promulgated on December 6, 2000. The standards apply to MWC units with capacities greater than 35 tons per day, but less than 250 tons per day for which commenced construction after August 30, 1999, or commenced modification, or reconstruction after June 6, 2001.

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart AAAA. Owners or operators must conduct initial compliance tests for all pollutants, operating parameters, and continuous monitoring systems. Annual performance tests and continuous monitoring systems (CEMS) for certain pollutants and operating parameters is also required. Owners or operators of small MWC units must submit an initial compliance report for all regulated pollutants and parameters. Once a year, owners or operators must submit a report that indicates the highest emission level determined during the annual test or recorded using the CEMS for all regulated pollutants. The report

must also include the lowest calculated hourly carbon feed rate.

If the emission level recorded for any of these pollutants is above the emission limit for the pollutant, or if any operating parameter is outside a specified range, then the owner or operator is required to submit a semiannual report for the calendar half during which the test was conducted or data was collected. The standards include provisions that would allow less frequent reporting if certain criteria are met.

Owners or operators of small MWC units are required to keep records of certain parameters, and maintain records of employee names and dates of their initial and annual review of the site-specific operating manual parameters. Records of continuous measurements of MWC unit load, the particulate matter control device temperature, and computation of average emissions and operating parameters, as well as opacity measurements are required. Owners or operators are also required to maintain records that identify the date, operating parameters, and opacity level exceedances, with reasons and a description of corrective action. Owners or operators are also required to keep records of daily sulfur dioxide, nitrogen oxides, and carbon monoxide, CEMS drift tests, and quarterly accuracy assessments. Owners or operators are required to maintain records of initial performance tests and all annual performance retests for compliance with particulate matter, dioxins/furans, hydrochloric acid, cadmium, lead, and mercury limits. Owners or operators also maintain records of periodic testing for fugitive ash emissions.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was six with 10 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 25,201 hours. On average, each respondent reported 1.7 times per year and 2,520 hours were spent preparing each response. The total annualized cost was $277,000, which was comprised of capital/startup costs of $200,000 and operation and maintenance costs of $77,000.

(8) NESHAP for Integrated Iron and Steel Manufacturing (40 CFR Part 63, Subpart FFFFF); EPA ICR Number 2003.03; OMB Control Number 2060–0517; expiration date June 30, 2006.

Affected Entities: Integrated iron and steel manufacturing facilities.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Integrated Iron and Steel Manufacturing Steel Pickling, 40 CFR Part 63, Subpart FFFFF, were proposed on July 13, 2001 (66 FR 36835), and promulgated on May 20, 2003 (68 FR 27645). This rulemaking establishes emission limits for particulate matter and/or opacity limits, which act as surrogates for individual metallic hazardous air pollutants (HAPs) limitations for six discharge points. Operating limits are also required for certain capture systems and control devices. The rule also includes an operating limit for the oil content of the sinter plant feedstock to reduce organic HAP. As an alternative, a facility may choose to monitor emissions of volatile organic compounds instead of oil content.

The monitoring, recordkeeping, and reporting requirements outlined in the rule are similar to those required for other NESHAP regulations. Plants are required to conduct a performance test to demonstrate initial compliance with each emission and opacity limit and establish operating limits for capture systems and control devices. A performance test is also required to demonstrate compliance with the operating limit on the oil content of sinter plant feedstock or for volatile organic compounds.

Consistent with the NESHAP General Provisions (40 CFR Part 63, Subpart A), respondents submit one-time notifications of applicability, a performance test result for the primary emission control device, and semiannual reports including periods of monitoring exceedances. Plants also must develop and implement a Startup, Shutdown, and Malfunction Plan (SSMP). An immediate report is required if actions taken in response to the SSMP were not consistent with the written SSMP. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Burden Statement: In the active approved ICR, the estimated number of respondents for this information collection 6 with 24 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 199 hours. The average annual respondent reports four times per year and spends 8 hours preparing each response.

The total annualized cost for continuous emissions monitoring was $64,300, which was comprised of capital/startup costs of $42,000 and operation and maintenance (O&M) costs of $22,300 per year.

(9) Federal Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR 62, Subpart FFF), EPA ICR Number 1847.04, OMB Control Number 2060–0181, expiration date June 30, 2006.

Affected Entities: Municipal waste combustion (MWC) units.

Abstract: Federal Emission Guidelines for Large Municipal Waste Combustors Constructed on or Before September 20, 1994 (40 CFR 62, Subpart FFF) were promulgated on November 12, 1998. The guidelines apply to MWC units with a combustion capacity greater than 250 tons per day of municipal solid waste (large MWC units) if construction of the unit commenced on or before September 20, 1994, and the unit is not covered by an Agency approved State or Tribal Plan.

The affected entities are subject to the General Provisions of the New Source Performance Standards (NSPS) at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 62, subpart FFF. Subpart FFF implements and enforces the emission guidelines (40 CFR part 60, subpart Cb) for large MWCs that were promulgated under the authority of Clean Air Act Sections 111 and 129. Under CAA Section 129(b)(2), States were required to submit plans to the Administrator for approval by December 19, 1996, that implement and enforce the 40 CFR part 60, subpart Cb. Section 129(b)(3) requires the Administrator to promulgate a Federal Plan to implement and enforce the guidelines in those States that have not submitted an approvable plan to Administrator by December 19, 1997.

Subpart FFF requires initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential to determine compliance, and are required of all sources subject to the NSPS. Subpart FFF contains the same testing, monitoring, recordkeeping and reporting requirements as Subpart Eb and subpart Cb. This occurs because Section 60.39b of subpart Cb requires that for a State Plan or Tribal Plan to be approved, it must contain the recordkeeping and reporting requirements of Subpart Eb. Because the Federal Plan is applicable in lieu of State or Tribal Plans for MWCs in areas that do not have approved State or Tribal Plans, the Federal Plan also contains the same recordkeeping and reporting as subparts Eb and Cb.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 14 with 98 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 39,067 hours. On average, each respondent reported 7 times per year and 399 hours were spent preparing each response. There were no capital/startup costs in the previous ICR. Operation and maintenance costs associated with continuous emission monitoring in the previous ICR were estimated to be $402,000.

(10) NSPS for Synthetic Fiber Production Facilities (40 CFR Part 60, Subpart HHH); EPA ICR Number 1156.10; OMB Control Number 2060–0059; expiration date June 30, 2006.

Affected Entities: Synthetic fiber production facilities.

Abstract: The New Source Performance Standards (NSPS) for the Synthetic Fiber Production Facility (CFR Part 60, Subpart HHH) were proposed on November 23, 1982, and promulgated on April 05, 1984. The standards apply to synthetic fiber production facilities that commence construction or reconstruction after November 23, 1982. These standards apply specifically to each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year. The provisions of this subpart do not apply to any facility that uses the reaction spinning process to produce spandex fiber or the viscose process to produce rayon fiber, or to facilities that commence modification but not reconstruction after November 23, 1982.

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 60, subpart HHH. Owners or operators of the affected facilities described must make one-time-only initial notifications and report on the results of the initial performance test. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to synthetic fiber production facilities provide information on emissions. Owners or operators are required to install, calibrate, maintain, and operate a continuous monitoring system for the measurement of makeup solvent and solvent feed. Also required are semiannual reports, and quarterly reports addressing excess emissions.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 25 with 63 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 1,838 hours. On average, each respondent reported three times per year and 29 hours were spent preparing each response. The total annualized cost was $188,000, which was comprised of no capital/startup and operation and maintenance costs of $188,000.

(11) NESHAP for Semiconductor Manufacturing (40 CFR Part 63, Subpart BBBBB); EPA ICR Number 2042.03; OMB Control Number 2060–0519; expiration date June 30, 2006.

Affected Entities: Semiconductor manufacturing.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Semiconductor Manufacturing (40 CFR Part 63, Subpart BBBBB) were proposed on May 8, 2002, and promulgated on May 22, 2003. These standards apply to the owners or operators of any new, reconstructed and existing semiconductor manufacturing facilities. Affected facilities are the manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, including associated research and development activities.

The affected entities are subject to the General Provision of the NESHAP at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart BBBBB. Respondents must submit one-time initial notifications, notification of compliance status, notification of performance evaluation; one-time report of performance evaluation, implement a startup, shutdown, and malfunction plan (SSMP) and semiannual reports of any event where the plan was not followed.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was one with two responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 234 hours. On average, each respondent reported two times per year and 117 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(12) NSPS for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978 (40 CFR Part 60, Subpart Da); EPA ICR Number 1053.08; OMB Control Number 2060–0023; expiration date July 31, 2006.

Affected Entities: Electric utility steam generating units.

Abstract: The New Source Performance Standards (NSPS) for electric steam generating units (40 CFR 60, Subpart Da) were proposed on September 18, 1978 and promulgated on June 11, 1979 (44 FR 33613). These standards apply to each electric utility steam generating unit which is capable of combusting more than 73 megawatts heat input of fossil fuel, for which, construction, modification, or reconstruction commenced after the date of proposal.

The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A and any changes to the General Provisions specified at 40 CFR part 60, subpart Da. In general, owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Quarterly reports of excess emissions, and/or semiannual reports are required.

Burden Statement: In the previously approved ICR the estimated number of respondents was 655 with 1,572 responses. The annual industry recordkeeping and reporting burden for this industry was 133,553 hours. On average each respondent reported 2.4 times per year and 85 hours were spent preparing each response. The annual capital/startup costs were $2,200,000 and, operation and maintenance costs were $9,660,000 resulting in a total annualized cost of $11,860,000.

(13) NESHAP for Hydrochloric Acid Production (40 CFR Part 63, Subpart NNNNN); EPA ICR Number 2032.04; OMB Control Number 2060–0529; expiration date July 31, 2006.

Affected Entities: Hydrochloric acid (HCl) production facilities.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Hydrochloric Acid Production (CFR Part 63, Subpart NNNNN) were proposed on September 18, 2001, and promulgated on April 17, 2003. This subpart applies to owners and operators of an HCl production facility that produces a liquid HCl product at a concentration of 30 percent by weight, or greater during its normal operations and is located at, or is part of, a major source of hazardous air pollutants. A HCl production facility is the collection of unit operations and

equipment associated with the production of liquid HCl product.

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart NNNNN. Respondents must submit one-time initial notifications, notification of intent to conduct a performance test, notification of compliance status, and startup, shutdown, and malfunction reports.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 71 with 117 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 50,052 hours. On average, each respondent reported 1.6 times per year and 428 hours were spent preparing each response. The responses were prepared semiannually and annually. The total annualized cost was $247,410, which was comprised of capital/startup costs of $25,869 and operation and maintenance costs of $221,541.

(14) NESHAP for Mercury (40 CFR Part 61, Subpart E); EPA ICR Number 0113.09; OMB Control Number 2060–0097; expiration date August 31, 2006.

Affected Entities: Mercury chlor-alkali cells that produce chlorine gas and alkali metal hydroxide.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Mercury (CFR Part 61, Subpart E) were proposed on December 7, 1971, and promulgated on April 6, 1973, and amended on October 14, 1975, and March 19, 1987. The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 61, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart E. Owners or operators of affected facilities described must make the following one-time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test; and the results of the initial performance test. These facilities must also maintain records of performance test results, startups, shutdowns, and malfunctions. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. A written report of each period for which hourly monitored parameters fall outside their established limits is required semiannually for mercury-cell chlor-alkali facilities.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 107 with 114 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 17,818 hours. On average, each respondent reported once per year and 156 hours were spent preparing each response. There were no capital/startup costs or operation and maintenance costs associated with continuous emission monitoring in the previous ICR.

(15) NESHAP for Secondary Aluminum Production (40 CFR Part 63, Subpart RRR); EPA ICR Number 1894.05; OMB Control Number 2060–0433; expiration date September 30, 2006.

Affected Entities: Secondary aluminum production plants.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production (CFR Part 63, Subpart RRR) were proposed on February 11, 1999, and promulgated on March 23, 2002, and amended on December 30, 2002. These regulations apply to component processes at secondary aluminum production plants that are major sources and area sources including aluminum scrap shredders, thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, secondary aluminum processing units composed of in-line fluxers and process furnaces, sweat furnaces, dross-only furnaces, and rotary dross coolers, commencing construction, or reconstruction after the date of proposal. As a result of a rule amendment, owners and operators of certain aluminum die casting facilities, aluminum foundries, and aluminum extrusion facilities were excluded from the rule coverage. Respondents do not include the owner or operator of any facility that is not a major source of hazardous air pollutants emissions except for those that are area sources of dioxin/furan emissions.

The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A and any changes, or additions to the General Provisions specified at 40 CFR part 61, subpart RRR. The standards require initial notifications, performance tests, and periodic reports. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance, and are required of all sources subject to NESHAP.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 1,640 with 3,430 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 94,998 hours. On average, each respondent reported two times per year and 28 hours were spent preparing each response. The total annualized cost was $231,000 which was comprised of capital/startup costs of $89,000 and operation and maintenance costs of $142,000.

(16) NESHAP for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR Part 63, Subpart II); EPA ICR Number 1712.05; OMB Control Number 2060–0030; expiration date September 30, 2006.

Affected Entities: Shipbuilding and repair facilities.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Shipbuilding and Ship Repair Facilities—Surface Coating (40 CFR Part 63, Subpart II) were promulgated on December 15, 1995. The affected entities are subject to the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) at 40 CFR part 63, subpart A that apply to all NESHAP sources. These requirements include recordkeeping and reporting for startup, shutdown, malfunctions, and semiannual reporting. Additions to the General Provisions for this source category are delineated in the standard and include initial notifications to the Agency for new, reconstructed and existing affected entities, and notifications of compliance status. Also, respondents are required to submit with the initial notification an implementation plan that describes the coating compliance procedures; recordkeeping procedures; and transfer, handling, and storage procedures that the source intends to use.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 56 with 112 responses per year. The annual industry reporting and recordkeeping burden for this collection of information was 28,594 hours. On average, each respondent reported twice per year and 255 hours were spent preparing each response. The total annualized cost was zero which was comprised of no capital/

startup costs and no operation and maintenance costs.

Dated: September 7, 2005.

Michael M. Stahl,

Director, Office of Compliance.

[FR Doc. 05–18827 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2005–0004, FRL–7972–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Drug Testing for Contract Employees (Renewal), EPA ICR Number 2183.02, OMB Control Number 2030–0044

AGENCY: Environmental Protection Agency

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 09/30/2005. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before October 21, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2005–0004, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Paul Schaffer, U.S. EPA, Office of Acquisition Management, Mail Code 3802R, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4366; fax number: (202) 565–2475; e-mail address: *schaffer.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On June 10, 2005 (70 *FR* 33898), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OEI–2005–0004, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Titles: Drug Testing for Contractor Employees (Renewal).

Abstract: EPA uses contractors to perform services throughout the nation with regard to environmental emergencies involving the release, or threatened release, of oil, radioactive materials or hazardous chemicals that may potentially affect communities and the surrounding environment. Releases may be accidental, deliberate, or may be caused by natural disasters. Emergency responders are available 24 hours-a-day to an incident, and respond with necessary personnel and equipment to eliminate dangers to the public and environment. Contractors responding to any of these types of incidents are responsible for conducting drug tests and applying Government-established suitability criteria in determining whether employees are acceptable to perform on given sites or on specific projects prior to contract employee performance. The information to be collected under the ICR for Drug Testing for Contractor Employees covers testing for the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). The Contractor shall maintain records of all drug tests.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are contractors involved with Emergency Response that have significant security concerns, as determined by the Contracting Officer on a case-by-case basis, to provide

qualified personnel that meet the drug testing requirements developed by EPA.

Estimated Number of Respondents: 450.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 450.

Estimated Total Annual Cost: $65,000, which includes $0 annual capital/startup and O&M costs, and $65,000 annual labor costs.

Changes in the Estimates: There is an increase in the estimated burden currently identified in the OMB Inventory of Approved ICR Burdens due to the fact that the approved burden covers a 6-month time period.

Dated: September 14, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–18833 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF PROTECTION AGENCY

[FRL–7972–1]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et.seg*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1935.02; Standardized Permit for RCRA Hazardous Waste Management Facilities (Final Rule), in 40 CFR 124.202–124.203; 40 CFR 124.10; 40 CFR 124.31; 40 CFR 123.211–124.214; 40 CFR part 267; 40 CFR 270.3; 40 CFR 270.10–270.11; 40 CFR 270.13–270.14; 40 CFR 270.42; 40 CFR 270.267; 40 CFR 270.275–270.320; was approved 08/26/2005; OMB Number 2050–0182; expires 08/31/2008.

EPA ICR No. 2031.02; Protection of Stratospheric Ozone: Request for Applications for Critical Use Exemption for the Phaseout of Methyl Bromide (Renewal); was approved 8/31/2005; OMB Number 2060–0482; expires 08/31/2008.

EPA ICR No. 2166.01; Application of Measures of Spontaneous Motor Activity for Behavioral Assessment in Human Infants; was approved 08/30/2005; OMB Number 2080–0073; expires 12/31/2006.

EPA ICR No. 1957.04; NESHAP for Metal Coil Surface Coating Plants; in 40 CFR part 63, subpart SSSS (Renewal); was approved 09/02/2005; OMB Number 2060–0487; expires 09/30/2008.

EPA ICR No. 1831.03; NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese; in 40 CFR part 63, subpart XXX (Renewal); was approved 09/02/2005; OMB Number 2060–0391 expires 09/30/2008.

EPA ICR No. 2081.02; Health Effects of Microbial Pathogens in Recreational Waters; National Epidemiological and Environmental Assessment of Recreational (NEEAR) Water Study (Renewal); was approved by OMB 09/09/2005; OMB Number 2080–0068; expires 09/30/2008.

EPA ICR No. 2201.01; Unincorporated Harris County Precinct 2 Water/Wastewater Study; was approved by OMB 09/09/2005; OMB Number 2040–0263; expires 02/28/2006.

Short Term Extensions

EPA ICR No. 1755.06; Regulatory Reinvention Pilot Projects Under Project XL; OMB Number 2010–0026; on 08/30/2005 OMB extended the expiration date through 09/30/2005.

Comment Filed

EPA ICR No. 2196.01; Standards of Performance for Stationary Compression Ignition Internal Combustion Engines; in 40 CFR part 60, subpart IIII; OMB Number 2060–0417; on 09/02/2005 OMB filed a comment.

EPA ICR No. 1788.07; NESHAP for Oil and Gas Production Facilities (Proposed Rule); on 09/02/2005 OMB filed a comment.

EPA ICR No. 2184.01; Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule (40 CFR parts 51 and 96) (Proposed Rule); on 09/09/2005 OMB filed a comment.

EPA ICR No. 2177.01; Standards of Performance for Stationary Combustion Turbines, (40 CFR part 60, subpart KKKK) (Proposed Rule); on 09/09/2005 OMB filed a comment.

EPA ICR No. 2032.03; NESHAP for Hydrochloric Acid Production (Revision); OMB Number 2060–0529; on 09/09/2005 OMB filed a comment.

Dated: September 13, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–18836 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0257; FRL–7736–8]

Dynamac Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be tranferred to Dynamac Corporation in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Dynamac Corporation has been awarded multiple work assignments to perform work for OPP, and access to this information will enable Dynamac Corporation to fulfill the obligations of the contract.

DATES: Dynamac Corporation will be given access to this information on or before September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Patsy Garnett, FIFRA Security Officer, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5455; e-mail address:*garnett.patsy@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2005–0257. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Contractor Requirements

The EPA has a requirement to provide the OPP Health Effects Division (HED) with technical and administrative support. HED is responsible for the registration and ongoing reregistration of pesticides. HED is charged with evaluating pesticide hazards, through the proposed use of the pesticide, to human heath and the environment. HED's authority is mandated under the FIFRA and the FFDCA, as amended by the Food Quality Protection Act of 1996 (FQPA).

Under contract number EP–W–04–052, the contractor will perform the following:

1. Product and residue chemistry chapter/Reregistration Eligibility Document information.

2. Review of studies submitted in response to Data-Call-Ins (DCIs), and updates of previously completed standards

3. Registration support.

4. Database support.

5. General backup support.

The North American Industry Classification System (NAICS) code is 541710. This contract is conducted as a small business set aside.

These contracts involve no subcontractors.

The OPP has determined that the contracts described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contracts with Dynamac Corporation, prohibits use of the information for any purpose not specified in these contracts; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Dynamac Corporation is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Dynamac Corporation until the requirements in this document have been fully satisfied. Records of information provided to Dynamac Corporation will be maintained by EPA Project Officers for these contracts. All information supplied to Dynamac Corporation by EPA for use in connection with these contracts will be returned to EPA when Dynamac Corporation has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: September 8, 2005.

Arnold E. Layne,

Director, Information Technology and Resource Management Division, Office of Pesticide Programs.

[FR Doc. 05–18419 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0043; FRL–7737–1]

Pyrethrins Revised Risk Assessments, Notice of Availability, and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the pesticide pyrethrins. In addition, this notice solicits public comment on risk reduction options for pyrethins. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for pyrethrins through the full, 6-Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice begins Phase 5 of the 6-Phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0043, must be received on or before November 21, 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: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@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 ID number OPP–2005–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0043. 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–2005–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0043.

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–2005–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register**citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on April 27, 2005 (70 FR 21754) (FRL–7704–7); a response to comments; and related documents for pyrethrins. EPA is also soliciting public comment on risk reduction options for pyrethrins. EPA developed the risk assessments for pyrethrins as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

The pyrethrins are used as broad-spectrum insecticides in four major sectors: Agricultural settings; commercial/industrial/institutional/ food and nonfood/mosquito abatement; domestic home and garden; and pet care. Pyrethrins are a mixture of naturally occurring insecticides derived from the flowers of Chrysanthemum *cinerariaefolium* and Chrysanthemum *cineum*.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for pyrethrins. The human health and ecological risk assessments identified potential risks of concern for pyrethrins including risks from occupational use of wettable powder formulations, and risks to non-target aquatic and terrestrial organisms. Potential post-application inhalation risk could result from exposure to metered release space sprays. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR 26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, pyrethrins is being reviewed through the full 6-Phase public participation process.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for pyrethrins. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the pyrethrins RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, '' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 13, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18704 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0040; FRL–7737–2]

MGK® 264 Revised Risk Assessments, Notice of Availability, and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the insecticide synergist N-Octyl bicycloheptene dicarboximide (MGK® 264). In addition, this notice solicits public comment on risk reduction options for MGK® 264. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for MGK® 264 through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice begins phase 5 of the 6 phase process.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0040, must be received on or before November 21, 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: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@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 ID number OPP–2005–0040. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2005–0040. 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–2005–0040. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0040.

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–2005–0040. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register**citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued for comment through a **Federal Register** notice published on April 27, 2005 (70 FR 21758) (FRL–7704–5); a response to comments; and related documents for MGK® 264. EPA also is soliciting public comment on risk reduction options for MGK® 264. EPA developed the risk assessments for MGK® 264 as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

MGK® 264 is an insecticide synergist. Synergists are chemicals that lack pesticidal effects of their own but enhance the pesticidal properties of other chemicals. MGK® 264 is usually formulated with natural pyrethrins, piperonyl butoxide (PBO) another synergist, or synthetic pyrethroids. It has numerous commercial and residential applications, is available in a broad range of formulations, and is applied by a wide variety of application methods.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for MGK® 264. Risks of concern associated with the use of MGK® 264 are: some residential and occupational indoor uses, post-application residential risk from exposure to metered release space sprays and pet uses, post-application occupational risk from non-food applications, and risks to non-target aquatic and terrestrial organisms. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004, (69 FR

26819)(FRL–7357–9) explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, MGK® 264 is being reviewed through the full 6–Phase public participation process.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency Docket for MGK® 264. Comments received after the close of the comment period will be marked ''late'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the MGK® 264 RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 13, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18707 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0042; FRL–7736–9]

Piperonyl Butoxide Revised Risk Assessments; Notice of Availability and Solicitation of Risk Reduction Options

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's revised risk assessments for the insecticide synergist piperonyl butoxide. In addition, this notice solicits public comment on risk reduction options for piperonyl butoxide. The public is encouraged to suggest risk management ideas or proposals to address the risks identified. EPA is developing a Reregistration Eligibility Decision (RED) for piperonyl butoxide through the full, 6–Phase public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. This notice begins Phase 5 of the 6–Phase public participation process.

DATES: Comments must be received on or before November 21, 2005.

ADDRESSES: Comments, identified by docket identification (ID) number OPP–2005–0042, 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: Cathryn O'Connell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0136; fax number: (703) 308–8041; e-mail address: *oconnell.cathryn@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 ID number OPP–2005–0042. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.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–2005–0042. 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–2005–0042. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0042.

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–2005–0042. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

EPA is making available the Agency's revised risk assessments, initially issued

for comment through a **Federal Register** notice published on April 27, 2005 (70 FR 21752) (FRL–7704–6); a response to comments; and related documents for piperonyl butoxide. EPA also is soliciting public comment on risk reduction options for piperonyl butoxide. EPA developed the risk assessments for piperonyl butoxide as part of its public process for making pesticide reregistration eligibility and tolerance reassessment decisions. Through these programs, EPA is ensuring that pesticides meet current standards under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

Piperonyl butoxide is an insecticide synergist. Synergists are chemicals that lack pesticidal effects of their own but enhance the pesticidal properties of other chemicals. Piperonyl butoxide is usually formulated with natural pyrethrin or synthetic pyrethroids. It has numerous and varied commercial and residential applications, is available in a broad range of formulations, and is applied by a wide variety of application methods.

EPA is providing an opportunity, through this notice, for interested parties to provide risk management proposals or otherwise comment on risk management for piperonyl butoxide. Risks of concern associated with the use of piperonyl butoxide are: pest control operators (PCOs) and agricultural handlers using wettable powder formulated products, post-application inhalation risk from exposure to metered release space sprays, and risks to non-target aquatic and terrestrial organisms. In targeting these risks of concern, the Agency solicits information on effective and practical risk reduction measures.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, piperonyl butoxide is being reviewed through the full 6–Phase public participation process.

All comments should be submitted using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**, and must be received by EPA on or before the closing date. Comments and proposals will become part of the Agency docket for piperonyl butoxide. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

After considering comments received, EPA will develop and issue the piperonyl butoxide RED.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of FFDCA, 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 13, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18708 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0411; FRL–7737–6]

Ametryn Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's Reregistration Eligibility Decision (RED) for the pesticide ametryn. The Agency's risk assessments and other related documents also are available in the ametryn Docket. Ametryn is a triazine herbicide used on field corn, popcorn, pineapple, and sugarcane. EPA has reviewed ametryn through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards.

FOR FURTHER INFORMATION CONTACT: Mark T. Howard, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; fax number: (703) 308–8005; e-mail address: *howard.markt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0411. 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. Background

A. What Action is the Agency Taking?

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA has completed a Reregistration Eligibility Decision (RED) for the pesticide, ametryn under section 4(g)(2)(A) of FIFRA. Ametryn, a triazine herbicide, is used on field corn, popcorn, pineapple, and sugarcane. EPA has determined that the data base to support reregistration is substantially complete and that products containing ametryn are eligible for reregistration provided the risks are mitigated either in the manner described in the RED or by another means that achieves equivalent risk reduction. Upon submission of any required product-specific data under section 4(g)(2)(B) and any necessary changes to the registration and labeling either to address concerns identified in the RED or as a result of product-specific data, EPA will make a final reregistration decision under section 4(g)(2)(C) for products containing ametryn.

EPA must review tolerances and tolerance exemptions that were in effect when the Food Quality Protection Act (FQPA) was enacted in August 1996, to ensure that these existing pesticide residue limits for food and feed commodities meet the safety standard established by the new law. Tolerances are considered reassessed once the safety finding has been made or a revocation occurs. EPA has reviewed and made the requisite safety finding for the ametryn tolerances included in this notice.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated with each pesticide. Due to its uses, risks, and other factors, ametryn was reviewed through the modified 4-Phase public participation process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for ametryn.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Few substantive comments were received during the earlier comment period. Further, for this pesticide, all issues related to this pesticide were resolved through consultations with stakeholders. The Agency, therefore, is issuing the Ametryn RED without a comment period.

B. What is the Agency's Authority for Taking this Action?

Section 4(g)(2) of FIFRA as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

Section 408(q) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(q), requires EPA to review tolerances and exemptions for pesticide residues in effect as of August 2, 1996, to determine whether the tolerance or exemption meets the requirements of section 408(b)(2) or (c)(2) of FFDCA. This review is to be completed by August 3, 2006.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 14, 2005.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 05–18706 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0242; FRL–7734–7]

Flusilazole; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Minnesota and South Dakota Departments of Agriculture to use the pesticide flusilazole (Punch 3.3EC), CAS No. 85509–19–9, and a flusilazole + famoxadone premix (Charisma 1.7 EC) on soybeans to control Asian soybean rust. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0242, must be received on or before October 6, 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: Carmen Rodia, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–5433; e-mail address: *rodia.carmen@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also

be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2005–0242. 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), Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA Dockets. EPA's policy is that copyrighted material will not be placed in EPA Dockets 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 Dockets. 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 Dockets. 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 Dockets.

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 Dockets 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 Dockets. 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 Dockets. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets 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 Dockets. 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 Dockets 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–2005–0242. 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–2005–0242. In contrast to EPA Dockets, 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 Dockets, 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 Dockets.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0242.

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, Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501, Attention: Docket ID Number OPP–2005–0242. 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 Dockets 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 Dockets. 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 Dockets 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**.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota and South Dakota Departments of Agriculture have requested the Administrator to issue a quarantine exemption for the use of flusilazole (Punch 3.3EC) and a flusilazole + famoxadone premix (Charisma 1.7 EC) on soybeans to control Asian soybean rust. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that most of the 73.8 million soybean acres planted in the United States could be compromised by Asian soybean rust. A variety of published reports have indicated that soybean rust is capable of causing yield reductions area-wide on soybeans from 10% to 50% and in selected fields greater than 90%. Due to the large acreage potentially impacted, registrants have informed the states that no single product will be available in sufficient quantity to treat the potential land area impacted by Asian soybean rust. Nationally, soybeans account for 73.8 million planted acres, 2.75 billion bushels produced, and over $13 billion value of production. Even a modest 4% minimal loss of production could reduce domestic soybean production to its lowest point in the preceding 5 years. According to the quarantine exemption request, several products have emerged as potentially efficacious against Asian soybean rust in international trials, including flusilazole. Flusilazole is a systemic, triazole fungicide that can be used as a systemic eradicant and a protectant with post-infection activity that can stop pathogen establishment in the early phases of disease development.

As part of this quarantine exemption request, the Applicant proposes a maximum of 2 applications of the 37.8% flusilazole formula (Punch 3.3EC) per season at an application rate of 1.65 ounces of active ingredient/acre (4 fluid ounces of product per acre) of soybeans treated. In addition, the Applicant proposes the use of 1 or 2 applications of the 18.8% (9.7% flusilazole + 9.1% famoxadone) flusilazole + famoxadone premix (Charisma 1.7 EC) per season at an application rate of 1.91 ounces of active ingredient (1.01 ounces of flusilazole + 0.9 ounces of famoxadone)/acre (9 fluid ounces of product per acre) of soybeans treated. Ground and aerial applications are requested for both products. If granted, the use of Punch 3.3EC on soybeans would result in approximately 0.010 million pounds of active ingredient used per 1 million soybean acres treated. Further, the use of the Charisma 1.7 EC on soybeans would result in approximately 0.12 million pounds of active ingredient used per 1 million soybean acres treated.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA.'' This notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the 15–day public comment period in determining whether to issue the quarantine exemption requested by the Minnesota and South Dakota Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–18418 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0243; FRL–7734–6]

Flutriafol; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Minnesota and South Dakota Departments of Agriculture to use the pesticide product flutriafol (Impact 125SC), (CAS No. 76674–21–0), on soybeans to control Asian soybean rust. The Applicant proposes the use of a new chemical which has not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0243, must be received on or before October 6, 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: Carmen Rodia, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–5433; e-mail address: *rodia.carmen@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0243. 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), Room 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA Dockets. EPA's policy is that copyrighted material will not be placed in EPA Dockets 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 Dockets. 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 Dockets. 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 Dockets.

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 Dockets 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 Dockets. 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 Dockets. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets 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 Dockets. 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 Dockets 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–2005–0243. 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–2005–0243. In contrast to EPA Dockets, 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 Dockets, 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 Dockets.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2005–0243.

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, Room 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA 22202–4501, Attention: Docket ID Number OPP–2005–0243. 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 Dockets 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 Dockets. 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 Dockets 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**.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota and South Dakota Departments of Agriculture have requested the Administrator to issue a quarantine exemption for the use of flutriafol (Impact 125SC) on soybeans to control Asian soybean rust. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that most of the 73.8 million soybean acres planted in the United States could be compromised by Asian soybean rust. A variety of published reports have indicated that soybean rust is capable of causing yield reductions area-wide on soybeans from 10% to 50% and in selected fields greater than 90%. Due to the large acreage potentially impacted, registrants have informed the states that no single product will be available in sufficient quantity to treat the potential land area impacted by Asian soybean rust. Nationally, soybeans account for 73.8 million planted acres, 2.75 billion bushels produced, and over $13 billion value of production. Even a modest 4% minimal loss of production could reduce domestic soybean production to its lowest point in the preceding 5 years. According to the quarantine exemption request, several products have emerged as potentially efficacious against Asian soybean rust in international trials, including flutriafol. Flutriafol is a systemic, triazole fungicide that can be used as a systemic eradicant and a protectant with post-infection activity that can stop pathogen establishment in the early phases of disease development.

As part of this quarantine exemption request, the Applicant proposes a maximum of 2 applications of this 12.5% flutriafol formula (Impact 125SC) per season at an application rate of 0.91 ounces of active ingredient/acre (7 fluid ounces of product per acre) of soybeans treated. Ground and aerial applications are requested. If granted, the use of Impact 125SC on soybeans would result in approximately 0.06 million pounds of active ingredient used per 1 million soybean acres treated.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.'' This notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the 15–day public comment period in determining whether to issue the quarantine exemption requested by the Minnesota and South Dakota Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–18420 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2005–0241; FRL–7734–8]

Metconazole; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a quarantine exemption request from the Minnesota and South Dakota Departments of Agriculture to use the pesticide metconazole (Caramba 90SL), CAS No. 125116–23–6, and a metconazole + pyraclostrobin co-pack (Headline-Caramba co-pack) on soybeans to control Asian soybean rust. Initially, a metconazole + pyraclostrobin premix product (Operetta 180EC) was also included in this quarantine exemption request. Operetta 180EC was subsequently withdrawn as a section 18 candidate. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments, identified by docket identification (ID) number OPP–2005–0241, must be received on or before October 6, 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: Carmen Rodia, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–5433; e-mail address: *rodia.carmen@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 code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2005–0241. 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), Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA Dockets. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

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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 Dockets. 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 Dockets 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–2005–0241. 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–2005–0241. In contrast to EPA Dockets, 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 Dockets, 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 Dockets.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2005–0241.

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, Room 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202–4501, Attention: Docket ID number OPP–2005–0241. 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 Dockets 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 Dockets. 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 Dockets 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**.

II. Background

What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Minnesota and South Dakota Departments of Agriculture have requested the Administrator to issue a quarantine exemption for the use of metconazole (Caramba 90SL) and a metconazole + pyraclostrobin co-pack (Headline-Caramba co-pack) on soybeans to control Asian soybean rust. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that most of the 73.8 million soybean acres planted in the United States could be compromised by Asian soybean rust. A variety of published reports have indicated that soybean rust is capable of causing yield reductions area-wide on soybeans from 10% to 50% and in selected fields greater than 90%. Due to the large acreage potentially impacted, registrants have informed the states that no single product will be available in sufficient quantity to treat the potential land area impacted by Asian soybean rust. Nationally, soybeans account for 73.8 million planted acres, 2.75 billion bushels produced, and over 13 billion value of production. Even a modest 4% minimal loss of production could reduce domestic soybean production to its lowest point in the preceding 5 years. According to the quarantine exemption request, several products have emerged as potentially efficacious against Asian soybean rust in international trials, including metconazole. Metconazole is a systemic, triazole fungicide that can be used as a systemic eradicant and a protectant with post-infection activity that can stop pathogen establishment in the early phases of disease development.

As part of this quarantine exemption request, the Applicant proposes a maximum of 2 applications of the 8.6% metconazole formula (Caramba 90SL) per season at an application rate of 0.96–1.14 ounces of active ingredient/acre (8.2–9.6 fluid ounces of product per acre) of soybeans treated. In addition, the Applicant proposes the use of 1 application of the 32.2% (8.6% metconazole + 23.6% pyraclostrobin) metconazole + pyraclostrobin co-pack (Headline-Caramba co-pack) per season at an application rate of 1.89 ounces of active ingredient (0.72 ounces of metconazole + 1.17 ounces of pyraclostrobin)/acre (9.64 fluid ounces of product per acre) of soybeans treated. Ground and aerial applications are requested for both products. If granted, the use of Caramba 90SL on soybeans would result in approximately 0.05–0.06 million pounds of active ingredient used per 1 million soybean acres treated. Further, the use of the (Headline-Caramba co-pack) on soybeans would result in approximately 0.10 million pounds of active ingredients used per 1 million soybean acres treated.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a quarantine exemption proposing ''use of a new chemical (i.e., an active ingredient) which has not been registered by EPA.'' This notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the 15–day public comment period in determining whether to issue the quarantine exemption requested by the Minnesota and South Dakota Departments of Agriculture.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 9, 2005.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 05–18350 Filed 9–20–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 15, 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 21, 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 all Paperwork Reduction Act (PRA) comments by email or U.S. postal mail. To submit your comments by email send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an email to *PRA@fcc.gov* or contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0423.

Title: Section 73.3588, Dismissal of Petitions to Deny or Withdrawal of Informal Objections.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 50.

Estimated Time per Response: 20 minutes.

Frequency of Response: On occasion reporting requirement; third party disclosure requirement.

Total Annual Burden: 17 hours.

Total Annual Cost: $42,500.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3588 requires a petitioner to obtain approval from the FCC to dismiss or withdraw its petition to deny when it is filed against a renewal application and applications for new construction permits, modifications, transfers and assignments. This request for approval must contain a copy of any written agreement, an affidavit stating that the petitioner has not received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition and an itemization of the expenses for which it is seeking reimbursement. Each remaining party to any written or oral agreement must submit an affidavit within five days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that a petition to deny or informal objection is filed under appropriate circumstances and not to extract payments in excess of legitimate and prudent expenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18844 Filed 9–20–05; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 12, 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 (PRA) 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 October 21, 2005. If you anticipate that you will be submitting PRA 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: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*. If you would like to obtain or view a copy of this new or revised information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0695.

Title: Section 87.219, Automatic Operations.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: .7 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 35 hours.

Total Annual Cost: $6,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section requires that if airports have control towers or Federal Aviation Administration (FAA) flight service stations, and more than one licensee wants to have an automated aeronautical advisory station (unicom), they must write an agreement outlining

who will be responsible for the unicom's operation, sign the agreement and keep a copy of the agreement with each licensee's station authorization. The information will be used by compliance personnel for enforcement purposes and by licensees to clarify responsibility in operating unicom.

OMB Control No.: 3060–0882.

Title: Section 95.833, Construction Requirements.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 1,468.

Estimated Time Per Response: 1 hour.

Frequency of Response: Reporting requirement: After 10 years of license grant.

Total Annual Burden: 1,468 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The requirement contained in 47 CFR 95.833 is necessary for the 218–219 MHz service system licensees to file a report after ten years of license grant to demonstrate that they provide substantial service to its service areas. The information is used by the Commission staff to assess compliance with 218–219 MHz service construction requirements, and to provide adequate spectrum for the service. This will facilitate spectrum efficiency and competition by the 218–219 MHz service licensees in the wireless marketplace. Without this information, the Commission would not be able to carry out its statutory responsibilities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18947 Filed 9–19–05; 1:09 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 14, 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 21, 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 e-mail or U.S. postal mail. To submit you 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.:* 3060–0076.

Title: Common Carrier Annual Employment Report.

Form No.: FCC Form 395.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,100.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion and annual reporting requirements and recordkeeping requirement.

Total Annual Burden: 1,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to OMB after the 60 day comment period because the Commission revised FCC Form 395. Additionally, we have adjusted the hour burden to more accurately reflect the current burden estimate.

The Annual Employment Report is a data collection device to enforce the Federal Communications Commission's Equal Employment Opportunity (EEO) rules. All common carrier licensees or permittees with 16 or more full-time employees are required to file this report and retain it for a two-year period. The report identifies each carrier's staff by gender, race, color and/or, national origin in each of nine major job categories.

The Commission plans to update its race/ethnicity classification categories on the FCC Form 395 to conform to the Office of Management and Budget's revised standards.

OMB Control No.: 3060–0800.

Title: FCC Wireless Telecommunications Bureau Application for Assignments of Authorization and Transfers of Control.

Form No.: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit; not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 32,151.

Estimated Time Per Response: 1.75 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 36,171 hours.

Total Annual Cost: $7,073,000.

Privacy Act Impact Assessment: Yes.

Needs and Uses: FCC Form 603 is a multi-purpose form used to apply for approval of assignment or transfer of control of licenses in the Wireless Radio Services. The data collected on this form is used by the FCC to determine whether the public interest would be served by approval of the requested assignment or transfer. This form is also used to notify the Commission of consummated assignments and transfers of wireless licenses that have previously been consented to by the Commission or for which notification but not prior consent is required.

This form is used by applicants/licensees in the Public Mobile Services, Personal Communications Services, General Wireless Communications Services, Private Land Mobile Radio Services, Broadcast Auxiliary Services, Broadband Radio Services, Educational Radio Services, Fixed Microwave Services, Maritime Services (excluding ships), and Fixed Aviation Services (excluding aircraft).

The purpose of this form is to obtain information sufficient to identify the

parties to the proposed assignment or transfer, establish the parties basic eligibility and qualifications, classify the filing, and determine the nature of the proposed service. Various technical schedules are required along with the main form applicable to Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, Notification of Consummation or Request for Extension of Time for Consummation.

This form is being revised to Gross Revenue/Total Assets; add a question if application being filed is the lead application of a series of applications; remove the data element for the option of a previous census population; and clarify existing questions/instructions for the general public as noted in the Communications Act of 1934, as amended, Section 310(b)(4).

After this 60 day comment period, the Commission will submit a Paperwork Reduction Act package to the Office of Management and Budget (OMB) to approve the revisions noted above.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18948 Filed 9–19–05; 1:09 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

September 14, 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 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 (PRA) 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: Persons wishing to comment on this information collection should submit comments November 21, 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 e-mail or U.S. postal mail. To submit you 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.:* 3060–0147.

Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communication Services to Candidates for Federal Office.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 13.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Total Annual Burden: 104 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 64.804 requires that a carrier must obtain a signed, written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for charges, and which shall state that the applicant or applicants are liable for payment and that the applicant understands that service will be discontinued if payment is not rendered. Section 64.804 also requires records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services to be maintained by the carrier to show separately, for interstate and foreign communications services all charges, credits, adjustments, and security, if any, and balance receivable.

This information is used by the agency to monitor the extent of credit extended to candidates for Federal office.

OMB Control No.: 3060–1009.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form No.: FCC Form 499–M.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit and not-for-profit institutions.

Number of Respondents: 1.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion, semi-annual, monthly, and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 1 hour.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This collection will be submitted to OMB after the 60-day comment period as an extension (no change) to an existing collection. In December 2002, the Commission issued a Second Further Notice of Proposed Rulemaking seeking comment on specific aspects of three connection-based proposals to further refine the record in its proceeding to revisit its universal service contribution methodology. First, the Commission sought comment on a contribution methodology that would impose a minimum contribution obligation on all interstate telecommunications carriers, and a flat charge for each end-user connection, depending on the nature or capacity of the connection. Next, the Commission sought comment on a proposal to assess all connections based purely on capacity. Finally, the Commission sought comment on a proposal to assess providers of switched connections based on their working telephone numbers. If adopted, the proposals may entail altering the current reporting requirements to which interstate telecommunications carriers are subject under Part 54 of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–18949 Filed 9–19–05; 1:09 pm]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at 202–523–5793 or via e-mail at *tradeanalysis@fmc.gov*. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011268–018.

Title: New Zealand/United States Discussion Agreement.

Parties: New Zealand/United States Container Lines Association; P&O Nedlloyd Limited; Hamburg-Süd; NYKLauritzenCool AB; Australia-New Zealand Direct Line; FESCO Ocean Management Ltd., A.P. Moller-Maersk A/S; and CP Ships USA, LLC.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of LauritzenCool AB to NYK LauritzenCool AB.

Agreement No.: 011275–018.

Title: Australia/United States Discussion Agreement

Parties: A.P. Moller-Maersk A/S; Australia-New Zealand Direct Line; FESCO Ocean Management Inc.; Hamburg-Süd; NYKLauritzenCool AB; CP Ships USA, LLC; P&O Nedlloyd Limited; Safmarine Container Lines NV; and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of LauritzenCool AB to NYKLauritzenCool AB.

Agreement No.: 011284–058.

Title: Ocean Carrier Equipment Management Association Agreement(''OCEMA'').

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P. Moller-Maersk A/S; CMA CGM, S.A.; Compania Sudamericana de Vapores, S.A.; CP Ships (USA) LLC; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Süd; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co. Ltd.; Mitsui O.S.K. Lines Ltd.; Contship Containerlines; Australia-New Zealand Direct Line; Orient Overseas Container Line Limited; P&O Nedlloyd Limited; P&O Nedlloyd B.V.; Nippon Yusen Kaisha; Yangming Marine Transport Corp.; COSCO Containerlines Company Limited; and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Jeffrey F. Lawrence, Esq. and Donald J. Kassilke, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment adds authority to discuss, share information and agree on matters related to the establishment and operation of equipment pools at port and inland terminals. The parties request expedited review.

Agreement No.: 011375–064.

Title: Trans-Atlantic Conference Agreement.

Parties: Atlantic Container Line AB; A.P. Moller-Maersk A/S; Hapag-Lloyd Container Linie GmbH; Mediterranean Shipping Company, S.A.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; and P&O Nedlloyd Limited.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment deletes obsolete references to the European Commission in Articles 5.3, 6.3, and 7.4 and corrects references to EU regulations in Article 2.2.

Agreement No.: 011392–003.

Title: LauritzenCool/Kyokuyo Discussion Agreement.

Parties: NYKLauritzenCool AB and Kyokuyo Shipping Co. Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of LauritzenCool AB to NYKLauritzenCool AB.

Agreement No.: 011493–005.

Title: C&S Shipping Joint Service Agreement.

Parties: NYKLauritzenCool AB and Seatrade Group N.V.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of LauritzenCool AB to NYKLauritzenCool AB.

Agreement No.: 011547–018.

Title: Eastern Mediterranean Discussion Agreement.

Parties: Farrell Lines, Inc.; COSCO Container Lines Co. Ltd.; China Shipping Container Lines Co., Ltd.; A.P. Moller-Maersk A/S; Mediterranean Shipping Company, S.A.; P&O Nedlloyd Limited; Hapag-Lloyd Container Linie GmbH; Turkon Container Transportation & Shipping, Inc.; and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment clarifies that any two or more parties may meet and discuss agreement business and adds a new provision dealing with liability for civil penalties.

Agreement No.: 011665–007.

Title: Specialized Reefer Shipping Association.

Parties: NYKLauritzenCool AB and Seatrade Group NV.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell, LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment changes the name of LauritzenCool AB to NYK LauritzenCool AB and removes NYK Reefers Ltd. as a party to the agreement.

Agreement No.: 011794–004.

Title: COSCON/KL/YMUK/Hanjin/Senator Worldwide Slot Allocation & Sailing Agreement.

Parties: COSCO Container Lines Company, Limited; Kawasaki Kisen Kaisha, Ltd.; Yangming (UK) Ltd.; Hanjin Shipping Co., Ltd.; and Senator Lines GmbH.

Filing Party: Robert B. Yoshitomi, Esq.; Nixon Peabody LLP; 2040 Main Street; Suite 850; Irvine, CA 92614.

Synopsis: The amendment increases the number of vessels used under the agreement as well as the total TEU capacities.

Agreement No.: 011874–003.

Title: K-Line/Zim Space Charter Agreement.

Parties: Zim Integrated Shipping Services, Ltd. and Kawasaki Kisen Kaisha, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment extends the minimum duration of the agreement through November 15, 2006.

Dated: September 16, 2005.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–18857 Filed 9–20–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017236N	Simpson's Shipping Enterprise, 248 West Lincoln Drive, Mount Vernon, NY 10050	June 20, 2005.
015797N	United Cargo Handling A/S dba United Cargo Lines, Strandagervej 10, DK 2900, Hellerup, Denmark.	August 23, 2002.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 05–18823 Filed 9–20–05; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) will publish periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

Proposed Project: Standardized Data Collection for Health Center Grantees Requesting Changes in Sites or Services: New

The scope of project for health centers funded under section 330 of the Public Health Service Act defines the activities that the total approved grant-related project budget supports. Based on regulations outlined in Title 45, Parts 74 and 92 of the Code of Federal Regulations, health center grantees must obtain prior approval for changes in the approved scope of project to ensure that any changes maintain a close connection with the program as approved in the grant application. The following are changes in scope for which HRSA is developing a standard data collection format: an increase or decrease in the number of sites, certain relocations of sites previously approved in the health center's grant application, and adding or dropping a service previously approved in the grant application.

HRSA is planning to automate the current process for submitting and reviewing requests for changes in scope listed above. The automated system will be part of HRSA's Electronic Handbooks Initiative, which is designed to streamline the grants application and administration process, and enable applicants and grantee organizations to communicate with HRSA and conduct activities electronically.

The burden estimate for this project is as follows:

Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
300	1	300	12	3,600

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received with 60 days of this notice.

Dated: September 14, 2005.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 05–18757 Filed 9–20–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Nominations of Topics for Evidence-Based Practice Centers

Agency for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Nominations of topics for evidence reports and technology assessments.

SUMMARY: AHRQ invites nominations of topics for evidence reports and technology assessments conducted by its Evidence-based Practice Centers (EPC) Program relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions, as well as topics relating to the organization and financing of health care. Previous evidence reports can be found at *http://www.ahrq.gov/clinic/epcix.htm.*

DATES: Topic nominations should be submitted by December 1, 2005, in order to be considered for fiscal year 2006. In addition to timely responses to this request for nominations, AHRQ also accepts topic nominations on an ongoing basis for consideration for future years. AHRQ will not reply to individual responses, but will consider all nominations during the selection processes. Those who submit topics that are selected will be notified by AHRQ.

ADDRESSES: Topics nominations should be submitted to Kenneth Fink, MD, MGA, MPH, Director, Evidence-based Practice Centers (EPC) Program, Center for Outcomes and Evidence, AHRQ, 540 Gaither Road, Rockville, MD 20850. Electronic submissions to *epc@ahrq.gov* are preferred.

FOR FURTHER INFORMATION CONTACT: Kenneth Fink, MD, MGA, MPH, Center for Outcomes and Evidence, AHRQ, 540 Gaither Rod, Rockville, MD 20850; Phone: (301) 427–1617; Fax; (301) 427–1640; E-mail: *kfink@ahrq.gov.*

Arrangement for Public Inspection: All nominations will be available for public inspections at the Center for Outcomes and Evidence, telephone (301) 427–1600, weekdays between 8:30 a.m. and 5 p.m. (eastern time).

SUPPLEMENTARY INFORMATION:

1. Background

Under Title IX of the Public Health Service Act, AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and through the promotion of improvements in clinical practice and health systems practices, including the prevention of diseases and other health conditions.

2. Purpose and Overview

The purpose of this notice is to solicit topic nominations for evidence reports and technology assessments. Professional societies, health systems, employers, insurers, providers, and consumer groups are encouraged to nominate topics and then collaborate with AHRQ, as it carries out its mission to promote the practice of evidence-based health care. In this endeavor, AHRQ serves as a science partner with private-sector and public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to expedite the translation of evidence-based research findings into improved health care services. To undertake scientific analyses and evidence syntheses on topics of high-priority to its public and private healthcare partners and the health care community generally, AHRQ awards task order contracts to its Evidence-based Practice Centers (EPCs).

The EPCs produce science syntheses—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, educational programs, and other strategies to improve the quality of health care and decision-making related to the effectiveness and appropriateness of specific health care technologies and services. The evidence reports and technology assessments also may be used to inform coverage and reimbursement polices. As the body of scientific studies related to organization and financing of health care grows, systematic review and analysis of these studies, in addition to clinical and behavioral research, can provide health system organizations with a scientific foundation for developing or improving system-wide policies and practices.

Currently, AHRQ supports approximately nine evidence reports per year, in collaboration with non-Federal partners, including national associations medical societies, health plans, and others. Nominations of topics from non-federal partners are solicited annually through a notice in the **Federal Register**. However, topic nominations are accepted on an ongoing basis. All nominations received in the previous year as well as topics that were previously submitted but not selected are considered for the upcoming year.

Reports and assessments usually require about 12 months for completion. AHRQ widely disseminates the EPC evidence reports and technology assessments, both electronically and in print. The EPC evidence reports and technology assessments do not make clinical recommendations or recommendations regarding reimbursement and coverage policies.

3. Role/Responsibilities of Partners

Nominators of topics selected for development of an EPC evidence report or technology assessment assume the role of Partners of AHRQ and the EPCs. Partners have defined roles and responsibilities. AHRQ places high value on these cooperative relationships, and takes into consideration a Partner organization's past performance of these responsibilities when considering whether to accept additional topics nominated by that organization in subsequent years. Specifically, Partners are expected to serve as resources to EPCs as they develop the evidence reports and technology assessments related to the nominated topic; serve as external peer reviewers of relevant draft evidence reports and assessments; and commit to timely translation of the EPC reports and assessments into their own quality improvement tools (e.g., clinical practice guidelines, performance measures), educational programs, or reimbursement policies; and dissemination of these derivative products to their membership as appropriate. AHRQ also is interested in members' use of these derivative products and the products' impact on enhanced health care. AHRQ looks to its Partners to provide use and impact data on products that are based on EPC evidence reports and technology assessment.

4. Topics for Reports

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, and patient advocacy organizations. Such topics may include the prevention, diagnosis and/or treatment of particular clinical and behavioral conditions, use of alternative or complementary therapies, and appropriate use of commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care such as risk adjustment methodologies, market performance measures, provider payment mechanisms, and insurance purchasing tools, as well as measurement or evaluation of provider integration of new scientific findings regarding health care and delivery innovations. Previous evidence reports can be found at *http://www.ahrq.gov/clinic/epcix.htm.*

AHRQ is very interested in receiving topic nominations from professional societies and organizations composed of members of minority populations, as well as topic nominations that have significant impact on AHRQ priority populations including low income groups, minority groups, women, children, the elderly, and individuals with special health care needs, such as those with disabilities, those who need chronic care or end-of-life healthcare, or those who live in inner-city and rural areas.

5. Topic Nomination

Nominations of topics for AHRQ evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition; an individual procedure, treatment, or technology; or a specific healthcare organizational or financial strategy. The EPC Coordinating Center can be contacted at *partnerTA@lewin.com* to assist with topic nominations (e.g., methods, processes, other guidance). The processes that AHRQ employs to select clinical and behavioral topics as well as organization and financing topics nominated by the EPCs are described below. For each topic, the nominating organization must provide the following information:

A. Rationale and supporting evidence on the relevance and importance of the topic;

B. Three to five focused questions on the topic to be addressed;

C. Plans for rapid translation of the evidence reports and technology assessments into clinical guidelines, performance measures, educational programs, or other strategies for strengthening the quality of health care services, or plans to inform development of reimbursement or coverage policies;

D. Plans for use and/or dissemination of these derivative products, e.g. to membership if appropriate; and

E. Process by which the nominating organization will measure the use of these products and impact of such use.

6. Topic Selection

Factors that will be considered in the selection of topics for AHRQ evidence report and technology assessment topics include:

A. Burden of disease including severity, incidence and/or prevalence or relevance of the organization/financial topic to the general population and/or AHRQ's priority;

B. Controversy or uncertainty about the topic and availability of scientific data to support the systematic review and analysis of the topic;

C. Total costs associated with a condition, procedure, treatment, technology, or organization/financial topic taking into account the number of people needing such care, the unit cost of care, and related or indirect costs;

D. Potential for reducing clinically significant variations in the prevention, diagnosis, treatment, or management of a disease or condition; or in changing the use of a procedure or technology; informing and improving patient and/or provider decision making; improving health outcomes; and/or reducing costs;

E. Relevance to the needs of the Medicare, Medicaid and other Federal healthcare programs; and

F. Nominating organization's plan to disseminate derivative products, measure use and impact of these products on outcomes, or otherwise incorporate the report into its managerial or policy decision making.

7. Submission of Nominations

Topics nominations should be submitted to Kenneth Fink, MD, MGA, MPH, Director Evidence-based Practice Centers (EPC) Program, Center for Outcomes and Evidence, AHRQ, 540 Gaither Road, Rockville, MD 20850. Electronic submissions to *epc@ahrq.gov* are preferred.

Dated: September 12, 2005.

Carolyn M. Clancy,

Director.

[FR Doc. 05–18870 Filed 9–20–05; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–05–04OP]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Delayed Symptoms Associated with the Convalescent Period of a Dengue Infection—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Dengue is a vector-borne febrile disease of the tropics transmitted most often by the mosquito Aedes aegypti. Symptoms of the acute disease include fever, headache, rash, retro-orbital pain, myalgias, arthralgias, vomiting, abdominal pain and hemorrhagic manifestations.

A number of symptoms are mentioned in the medical literature as associated with the convalescent period after dengue infection, including depression, dementia, loss of sensation, paralysis of lower and upper extremities and larynx, epilepsy, tremors, manic psychosis, amnesia, loss of visual acuity, hair loss, and peeling of skin. The evidence for these findings has derived mainly from case series and case reports, but no analytic study has been conducted to define the timing, frequency, and severity of these symptoms, and quantity the magnitude of the association between dengue infection and each of these disorders.

The objective of this study is to compare mental health disorders and other delayed complications associated with dengue infection and convalescence among study groups. The study will be conducted in Puerto Rico, where dengue is endemic, in collaboration with Dengue Branch of the Centers for Disease Control and Prevention. Laboratory positive confirmed cases of dengue, laboratory negative suspected dengue cases, and neighborhood controls will be prospectively enrolled in the study. Telephone interviews will be conducted and information will be collected prospectively regarding symptoms experienced during the first five months after the onset of symptoms of a dengue infections. There are no costs to the respondents other than their time. The estimated annualized burden is 426 hours.

ESTIMATED TOTAL ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Screeners	810	2	1/60
Laboratory positive confirmed dengue	200	2	20/60
Dengue negative control	200	2	20/60
Neighborhood control	200	2	20/60

Joan Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–18786 Filed 9–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

(30 Day–05–04KJ)

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 371–5983 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, via fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Evaluation of the Poison HELP Campaign—to Enhance Public Awareness of the National Poison Toll-Free Number, Poison Center Access and Poison Prevention—New—The National Center for Injury Prevention and Control (NCIPC).

Background and Brief Description

Every day more than 6,000 calls about poison emergencies are placed to poison control centers (PCCs) throughout the United States. Although PCCs clearly save lives and reduce healthcare costs, the system that delivers care and prevents poisoning is comprised of more than 131 telephone numbers and thousands of disjointed local prevention efforts.

As a result a national media campaign was launched to establish a national toll-free helpline entitled Poison Help (1–800–222–1222) that the general public, health professionals, and others can use to access poison emergency services and prevention information 24 hours a day, seven days a week. The Poison Help campaign is the only national and regional media effort to promote awareness and use of the national toll-free number. The prospective audience for the Poison Help campaign is very broad—any person at any time is a potential user.

To evaluate the campaign's current performance a General Population Survey will be conducted with 2,500 households in the United States. The General Population Survey supplies unique and essential information that provides CDC and HRSA with data on variations in awareness and use of the national toll-free number. These data will also suggest which campaign messages about poison prevention or available PCC services have resonated most strongly with various audiences. Results will be used to make comparisons with future evaluation activities and to make improvements to future campaign efforts. There is no cost to respondents other than their time. The total annualized estimated burden hours are 382.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)
Screened Households	2,940	1	1/60
Survey Respondents	2,500	1	8/60

Dated: September 15, 2005.

Betsey S. Dunaway,

Acting Reports Clearance Officer, Office of the Chief Science Centers for Disease Control and Prevention.

[FR Doc. 05–18790 Filed 9–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions: Availability for Licensing and Cooperative Research and Development Agreements (CRADAs)

AGENCY: Centers for Disease Control and Prevention, Technology Transfer Office, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The invention named in this notice is owned by agencies of the United States Government and is available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207, and is available for cooperative research and development agreements (CRADAs) in accordance with 15 U.S.C. 3710a, to achieve expeditious commercialization of results of federally funded research and development. A U.S. non-provisional patent application and a PCT application have been filed. National stage foreign patent applications claiming priority to the PCT application are expected to be filed within the appropriate deadlines to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing and CRADA information, and information related to the technology listed below, may be obtained by writing to Suzanne Seavello Shope, J.D., Technology Licensing and Marketing Scientist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 4770 Buford Highway, Atlanta, GA 30341, telephone (770) 488–8613; facsimile (770) 488–8615; or e-mail *sshope@cdc.gov*. A signed Confidential Disclosure Agreement (available under Forms at *http://www.cdc.gov/tto*) will be required to receive copies of unpublished patent applications and other information.

Diagnostics

Development of Real-Time PCR Assay for Detection of Pneumococcal DNA and Diagnosis of Pneumococcal Disease

The ability to diagnose pneumococcal pneumonia is limited by the lack of a sensitive, specific, and accurate laboratory assay. Using the PsaA (pneumococcal protein A) protein gene, CDC researchers have designed unique primers and probes and developed a real-time PCR assay for detection of pneumococcal DNA in serum and other sterile site body fluids for the diagnosis of pneumococcal disease. The PCR assay provides a tool for accurate diagnosis by clinicians, and for determination of the effectiveness (efficacy) of newly licensed pneumococcal polysaccharide-conjugate

vaccines or future common protein pneumococcal vaccines.

Inventors: Maria da Gloria Carvalho, Jacquelyn S. Sampson, Edwin W. Ades, George Carlone and Karen McCaustland, CDC Ref. #: I–001–05.

Dated: September 9, 2005.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 05–18791 Filed 9–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Working Group of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 10 a.m.–5 p.m., October 6, 2005.

Place: Westin Cincinnati Hotel, 21 E. 5th Street, Cincinnati, Ohio 45202. Telephone: (513) 621–7700; Fax: (513) 852–5670.

Status: Open to the public, but without a public comment period.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, delegated to the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The agenda for this working group meeting will focus on the discussions of Site Profile Reviews, particularly Bethlehem Steel, Y–12, and the Savannah River Site; discussions of Task 3 of the contract with S. Cohen & Associates (SC&A) Review; and other SC&A Review activities.

The agenda is subject to change as priorities dictate.

In the event a member of the working group cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person for More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: (513) 533–6825, fax: (513) 533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 16, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–18905 Filed 9–20–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Oklahoma State Plan Amendment 04–06

AGENCY: Centers for Medicare and Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on October 27, 2005, at 9 a.m. in Conference Room 820, 1301 Young Street, Dallas, Texas, to reconsider our decision to disapprove Oklahoma State Plan Amendment 04–06.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by October 6, 2005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, Lord Baltimore Drive, Mail Stop LB–23–20, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Oklahoma State Plan Amendment (SPA) 04–06, which was submitted on September 23, 2004. Under SPA 04–06, Oklahoma sought to increase the per diem rate for residential behavioral management services provided to children residing in therapeutic foster care homes. By letter dated June 20, 2005, CMS disapproved the SPA because it does not comport with the requirements set forth in title XIX of the Social Security Act (the Act) as discussed below:

At issue in this reconsideration is whether the State's payment methodology complies with section 1902(a)(4) of the Act, which requires that the State plan must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of the plan. The regulations at 42 CFR 430.10 and 430.12 require that the State plan and amendments contain all information necessary for the CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation in the State program. The State's payment methodology is not explained in sufficient detail for CMS to determine whether the proposed increase is consistent with proper and efficient administration of the plan, as required by section 1902(a)(4).

Also at issue is whether an increase in the State's per diem rate is consistent with section 1902(a)(30)(A) of the Act, which requires that States have methods and procedures to ensure that payments are consistent with efficiency, economy, and quality of care. The State's per diem rate represents a bundled payment methodology wherein the State pays a single rate for one or more of a group of different services furnished to an eligible individual during a fixed period of time. The payment is the same regardless of the number of services furnished, the specific costs, or otherwise available rates. The State has not provided sufficient information to determine whether the bundled rate for behavioral management services, and the proposed increase, accurately reflect true costs or reasonable fees for the services included in the bundle, and whether the proposed increase in Medicaid payment is due to permissible

increases in costs of Medicaid services specifically.

In summary, the State lacks a clear and auditable methodology for setting the payment rate and justifying the proposed payment increase consistent with the requirement of sections 1902(a)(4) and 1902(a)(30)(A).

For the reasons cited above, and after consulting with the Secretary of Health and Human Services, as required by Federal regulations at 42 CFR 430.15(c)(2), CMS disapproved Oklahoma SPA 04–06.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Howard J. Pallotta,
General Counsel,
Oklahoma Health Care Authority,
Lincoln Plaza, 4545 N. Lincoln Boulevard,
Suite 124, Oklahoma City, OK 73105.

Dear Mr. Pallotta: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State plan amendment (SPA) 04–06, which was submitted on September 23, 2004, and disapproved on June 20, 2005.

Under SPA 04–06, Oklahoma sought to increase the per diem rate for residential behavioral management services provided to children residing in therapeutic foster care homes. The Centers for Medicare & Medicaid Services (CMS) disapproved the SPA because it does not comport with the requirements set forth in title XIX of the Act.

At issue in this reconsideration is whether the State's payment methodology complies with section 1902(a)(4) of the Act, which requires that the State plan must provide for such methods of administration as are found by the Secretary to be necessary for the proper and efficient administration of the plan. The regulations at sections 42 CFR 430.10 and 430.12 require that the State plan and amendments contain all information necessary for CMS to determine whether the plan can be approved to serve as a basis for Federal financial participation in the State program. The State's payment methodology is not explained in sufficient detail for CMS to determine whether the proposed increase is consistent with proper and efficient administration of the plan, as required by section 1902(a)(4).

Also at issue is whether an increase in the State's per diem rate is consistent with section 1902(a)(30)(A) of the Act, which requires that States have methods and procedures to assure that payments are consistent with efficiency, economy, and quality of care. The State's per diem rate represents a bundled payment methodology wherein the State pays a single rate for one or more of a group of different services furnished to an eligible individual during a fixed period of time. The payment is the same regardless of the number of services furnished, or the specific costs, or otherwise available rates. The State has not provided sufficient information to determine whether the bundled rate for behavioral management services, and the proposed increase, accurately reflect true costs or reasonable fees for the services included in the bundle and whether the proposed increase in Medicaid payment is due to permissible increases in costs of Medicaid services specifically.

In summary, the State lacks a clear and auditable methodology for setting the payment rate and justifying the proposed payment increase consistent with the requirement of sections 1902(a)(4) and 1902(a)(30)(A).

For the reasons cited above, and after consulting with the Secretary of Health and Human Services, as required by Federal regulations at 42 CFR section 430.15(c)(2), CMS disapproved Oklahoma SPA 04–06.

I am scheduling a hearing to be held on October 27, 2005, at 9 a.m. at 1301 Young Street, Conference Room 820, Dallas, Texas, to reconsider the decision to disapprove SPA 04–06. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,

Mark B. McClellan, M.D., Ph.D.

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 15, 2005.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 05–18843 Filed 9–20–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Evaluation of Child Care Subsidy Strategies.

OMB No.: New Collection.

Description: To conduct four experiments to test aspects of the child care subsidy system. Two simultaneous experiments will occur in Cook County, Illinois; one will occur in Washington State; and one will occur in Massachusetts.

Illinois. The State of Illinois has agreed to conduct two simultaneous experiments, which will occur in Cook County. The first will test the impact of receiving a child care subsidy on parental employment and income, and on the stability of child care arrangements; the second experiment will test the impact of losing a subsidy on the same set of outcomes. For the first experiment, families with incomes above the current income eligibility ceiling who apply for subsidies will be approved to receive subsidies. In the second experiment, families in the treatment group with incomes above the eligibility ceiling who apply to be recertified to continue using subsidies will remain eligible. In addition, each experiment will test the effects of a longer certification period by certifying eligibility for some families for six months and other families for one year. Families in the two treatment groups will retain eligibility for subsidies over the two-year study period, provided their income remains below the experimental limit and they comply with other requirements (e.g., continue to work). Outcomes will be measured through administrative records and periodic interviews with parents.

Washington. In Washington State, the study will test a co-payment schedule that smoothes out what are currently abrupt increases in co-payments that occur when a family moves from one income category to the next and reduces the co-payment burden for many

families. Families that apply (or reapply) for subsidies and are determined to be eligible under current rules will be randomly assigned to the experimental co-payment schedule or the existing schedule. (Families with co-payments from the experimental schedule will either pay the same amount, or less, than families whose co-payments are calculated using the existing schedule.) Families will retain the same co-payment schedule for two years, provided they continue to be eligible for subsidies. Outcomes will be measured through analysis of administrative data and periodic interviews with parents.

Massachusetts. In Massachusetts, the study is an experimental test of the effectiveness of a developmental curriculum implemented in family child care homes. Family child care providers who serve subsidized and other low-income children and are linked to family child care networks will be randomly assigned to a treatment or control group. Providers in the treatment group will use the developmental curriculum and be trained through regular visits to the home by specially trained mentors. These providers will receive materials to use with children from 0 to 5 years of age. Providers in the control group will receive the more general technical assistance and support visits that they currently receive. Impacts on provider behavior and the home environment will be measured through direct observations in the homes. Child assessments will be conducted through provider reports for the younger children and through standardized tests for children 30 months and older.

Respondents: Illinois. Parents who apply (or reapply) for subsidies and are eligible and agree to be in the study will be interviewed by telephone up to three times in the 24 months after they enter the study.

Washington State. Parents who apply (or reapply) for subsidies and are eligible and agree to be in the study will be interviewed by telephone up to three times over the 24 months of the study. Approximately 30 state employees working at the Department of Health and Human Services in the Division of Child Care and Early Learning or the Division of Community Service will be interviewed as part of the implementation study.

Massachusetts. Children will be assessed 7 months after implementing the curriculum, after 11 months, and after 23 months. Providers will be asked to respond to a brief survey 7 and 23 months after the study begins.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Illinois parent survey	5,000	1.5	.58	4,350
Washington parent survey	2,000	1.5	.58	1,740
Washington process study interview	30	.5	.5	8
Massachusetts child assessments	700	1.5	.5	525
Massachusetts provider questionnaire	350	1	.16	56

Estimated Total Annual Burden Hours: 6,679.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information colleciton described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 15, 2005.

Robert Sargis,

Reports Clearance, Officer.

[FR Doc. 05–18771 Filed 9–20–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

Grant to United States Conference of Catholic Bishops

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Award announcement.

CFDA#: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.576. The title is the Refugee Family Enrichment Program.

Amount of Award: $194,000.

SUMMARY: Notice is hereby given that a noncompetitive single source program expansion supplement to an ongoing competitive award is being made to the United States Conference of Catholic Bishops (USCCB) in response to an unsolicited application. The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2006. USCCB's application is expected to address issues critical to the development and implementation of marriage education programs for refugees by opening three new program sites.

In September of 2003, ORR awarded USCCB a grant of $1,000,000,000 to develop a Refugee Family Enrichment program which included technical assistance to subgrantees. Over the past two years, USCCB has established an effective program in sites that have successfully prepared thousands of refugee families for the challenges they will face during resettlement. Because other Refugee Marriage Enrichment grantees are primarily regional in scope, we believe USCCB is uniquely suited to effectively implement this supplemental award. USCCB has affiliates across the country and has no physical or

programmatic limitations regarding which ethnic groups they can serve. We believe that by allowing them to increase the number of sites, that it would be a cost-effective way of helping more refugees develop the skills that help their marriages succeed and give their children a better chance of success in the U.S. Without it, these sites might struggle to provide refugee clients with the programs they need in order to achieve self-sufficiency.

The proposed project period is 9/30/2005–9/29/2006.

Assistance to support grantees in developing better approaches to the delivery of services provided to refugees is authorized by section 412(c)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1522(c)(1)).

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW., Washington, DC 20447, Loren Bussert—(202) 401–4732, *lbussert@acf.hhs.gov*.

Dated: September 15, 2005.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 05–18847 Filed 9–20–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0143]

High Chemical Co. et al.; Withdrawal of Approval of 13 New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 13 new drug applications (NDAs) from multiple holders of these applications. The basis for the withdrawals is that the holders of the applications have repeatedly failed to file required annual reports for the applications.

DATES: Effective September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). In the **Federal Register** of January 28, 2005 (70 FR 4134), FDA published a notice offering an opportunity for a hearing (NOOH) on a proposal to withdraw approval of 13 NDAs because the firms had failed to submit the required annual reports for these applications. On April 28, 2005, the agency withdrew that notice (70 FR 22054) and reissued the corrected NOOH (70 FR 22052). FDA received two responses to the NOOH:

1. The Kendall Co. (Kendall), 15 Hampshire St., Mansfield, MA 02048, notified the agency that they no longer market the following products: NDA 10–337, Fling Antiperspirant Foot Powder; NDA 10–823, BIKE Foot and Body Powder; and NDA 10–824, BIKE Anti-Fungal Aerosol Spray. Kendall informed FDA that their historical files show they sold their rights to these three products (including the licenses) many years ago; however, they did not notify the agency of the sale. Because Kendall sold the products many years ago, they have no record of the new application holder. Neither The Kendall Co. nor the new license holder requested a hearing.

2. Bayer HealthCare LLC, Biological Products Division, 800 Dwight Way, Berkeley, CA 94701–1966, notified the agency that NDA 10–541, BY-NA-MID (Butylphenamide or B and Zinc Oxide or Stearate) Tincture, Ointment, Lotion, and Powder, is not a product produced at their Berkeley site, and that they would forward the NOOH to Bayer HealthCare LLC, Pharmaceutical Division, 400 Morgan Lane, West Haven, CT 06516–4175. Bayer HealthCare LLC in West Haven, CT, informed the agency that NDA 10–541, BY-NA-MID, is not their product and that they have no regulatory files for this product. Bayer HealthCare LLC did not request a hearing.

No other firms responded to the NOOH. Failure to file a written notice of participation and request for hearing as required by § 314.200 (21 CFR 314.200) constitutes an election by the applicant not to make use of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and a waiver of any contentions concerning the legal status of the drug products. Therefore, the Director, Center for Drug Evaluation and Research, is withdrawing approval of the 13 applications listed in the table of this document.

Application No.	Drug	Applicant
NDA 0–763	Sterile Solution Procaine Injection 2% (Procaine Hydrochloride (HCl))	High Chemical Co., 1760 N. Howard St., Philadelphia, PA 19122
NDA 2–959	Nicotinic Acid (Niacin) Tablets	The Blue Line Chemical Co., 302 South Broadway, St. Louis, MO 63102
NDA 4–236	Sherman (thiamine HCl) Elixir	Do.
NDA 4–368	Ascorbic Acid Tablets	Do.
NDA 5–159	D.S.D. (diethylstilbestrol dipropionate)	Do.
NDA 9–452	Multifuge (piperazine citrate) Syrup	Do.
NDA 10–055	Fire Gard Three-Alarm Burn Relief (Methylcellulose)	Gard Products, Inc., 2560 Tara Lane, Brunswick, GA 31520
NDA 10–337	Fling Antiperspirant Foot Powder	Bauer & Black, A Division of The Kendall Co., One Federal St., Boston, MA 02110
NDA 10–541	BY-NA-MID (Butylphenamide or B and Zinc Oxide or Stearate) Tincture, Ointment, Lotion, and Powder	Miles Inc., Cutter Biological, P.O. Box 1986, Berkeley, CA 94701
NDA 10–823	BIKE Foot and Body Powder	Bauer & Black, A Division of The Kendall Co.
NDA 10–824	BIKE Anti-Fungal Aerosol Spray	Do.
NDA 11–233	TKO with Entrin Roll-On Liquid	Modern-Labs, Inc., Maple Rd., Gambrills, MD 21504
NDA 19–432	Spectamine (Iofetamine Hydrochloride I–123) Injection	IMP Inc., 8050 El Rio, Houston, TX 77054

The Director, Center for Drug Evaluation and Research, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), and under authority delegated by the Commissioner of Food and Drugs, finds that the holders of the applications

listed in this document have repeatedly failed to submit reports required by § 314.81. In addition, under § 314.200, we find that the holders of the applications have waived any contentions concerning the legal status of the drug products. Therefore, under these findings, approval of the applications listed in this document, and all amendments and supplements thereto, is hereby withdrawn, effective September 21, 2005.

Dated: August 29, 2005.

Steven Galson,

Director, Center for Drug Evaluation and Research.

[FR Doc. 05–18873 Filed 9–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Dallas District, in cooperation with the Society of Clinical Research Associates (SoCRA), is announcing a workshop on FDA clinical trial statutory and regulatory requirements. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA-regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, February 8, 2006, from 8:15 a.m. to 5 p.m. and Thursday, February 9, 2006, from 8:15 a.m. to 4 p.m.

Location: The public workshop will be held at the Crowne Plaza Hotel Houston Medical Center, 6701 South Main, Houston, TX 77030, 713–797–1110, FAX: 713–796–8291.

Contact: David Arvelo, Food and Drug Administration, 4040 North Central Expressway, suite 900, Dallas, TX 75204, 214–253–4952, FAX: 214–253–4970, e-mail: *oraswrsbr@ora.fda.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $485 (member), $560 (nonmember), or $460 (government employee nonmember). (Registration fee for nonmembers includes a 1-year membership.) The registration fee for FDA employees is waived. Make the registration fee payable to SoCRA, P.O. Box 101, Furlong, PA 18925. To register via the Internet go to *http://www.socra.org/html/FDA_Conference.htm* (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**). The registrar will also accept payment by major credit cards. For more information on the meeting, or for questions on registration, contact 800–SoCRA92 (800–762–7292), or 215–345–7369, or via e-mail: *socramail@aol.com*. Attendees are responsible for their own accommodations. To make reservations at the Crowne Plaza Hotel Houston Medical Center at the reduced conference rate, contact the Crowne Plaza Hotel Houston Medical Center (see *Location*) before January 17, 2005. The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials.

Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration. If you need special accommodations due to a disability, please contact David Arvelo (see *Contact*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The workshop on FDA clinical trials statutory and regulatory requirements, helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. Topics for discussion include the following: (1) FDA regulation of the conduct of clinical research; (2) medical device, drug, and biological product aspects of clinical research; (3) investigator initiated research; (4) pre-investigational new drug application meetings and FDA meeting process; (5) informed consent requirements; (6) ethics in subject enrollment; (7) FDA regulation of institutional review boards; (8) electronic records requirements; (9) adverse event reporting; (10) how FDA conducts bioresearch inspections; and (11) what happens after the FDA inspection. FDA has made education of the research community a high priority to ensure the quality of clinical data and protect research subjects. The workshop helps to implement the objectives of section 406 of the FDA Modernization Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: September 15, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–18871 Filed 9–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 25, 2005, from 8 a.m. to 5 p.m. and on October 26, 2005, from 8 a.m. to 3 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD. The hotel phone number is 301–977–8900.

Contact Person: Karen Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *somersk@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512544. Please call the Information Line for up-to-date information on this meeting. The background material will become available no later than the day before the meeting and will be posted on FDA's Web site at *http://*

www.fda.gov/ohrms/dockets/ac/acmenu.htm under the heading ''Psychopharmacologic Drugs Advisory Committee (PDAC)'' (click on the year 2005 and scroll down to PDAC meetings).

Agenda: On October 25, 2005, the committee will discuss issues and questions pertinent to the need for longer-term efficacy data for proposed drug treatments for chronic psychiatric disorders, and issues and questions pertinent to optimal study designs for obtaining valid information about longer-term benefits of drug treatment. On October 26, 2005, the committee will discuss the question of whether or not dietary restrictions would be needed for the 20 milligrams (mg) dose for proposed trade name EMSAM (selegiline transdermal system) (new drug applications (NDAs): NDA 21–336, short-term claim, and NDA 21–708, longer-term claim, Somerset Pharmaceuticals), for the treatment of major depressive disorder.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 12, 2005. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on October 25, 2005, and between approximately 11 a.m. and 11:30 a.m. on October 26, 2005. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 12, 2005, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 8, 2005.

Scott Gottlieb,

Deputy Commissioner for Policy.

[FR Doc. 05–18872 Filed 9–20–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in 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 Advisory Council.

Date: October 26, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center home page: *http://nhlbi.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18864 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Preclinical Studies of Gene Therapy for Parkinson's Disease.

Date: October 4, 2005.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Suite 3208, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, UDALL Center Review.

Date: October 27, 2005.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Joann McConnel, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324, *mcconnej@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18859 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: September 22–23, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC; 6001 Executive Blvd., Ste. 3208, Bethesda, MD 20892–9529, (301) 496–9223, *saavedrr@ninds.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: October 20–21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street NW Washington, DC 20005.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Blvd., Room #3208, Bethesda, MD 20892, (301) 496–0660, *sawczuka@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: October 24–25, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: October 27, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham City Center Hotel, 1143 New Hampshire Ave., NW, DC 20037.

Contact Person: Richard D. Crosland, Phd, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: October 27–28, 2005.

Time: 7:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Katherine M. Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18861 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Development Biology Subcommittee.

Date: October 10–11, 2005.

Time: October 10, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

*Time:*October 11, 2005, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18862 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, NINR Institutional Training (T32) Grants.

Date: October 21, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John E. Richters, PhD, Scientific Review Administrator, Office of Review, Division of Extramural Activities, National Institute of Nursing Research/NIH, 6701 Democracy Blvd., Room 713, MSC 4870, Bethesda, MD 20817, (301) 594–5971, *jrichters@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18863 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: Minority Programs Review Committee, MARC Review Subcommittee A.

Date: October 11–12, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12B, 45 Center Drive MSC 6200, Bethesda, MD 20892–6200, (301) 594–2849, *rm63f@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18865 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 20, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Quality Suites, 3 Research Court, Potomac II, Rockville, MD 20850.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93,209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Officer of Federal Advisory Committee Policy.

[FR Doc. 05–18866 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Learning Disabilities Research Center.

Date: October 13–14, 2005.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5B01, Bethesda, MD 20892, (303) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18867 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: October 10–11, 2005.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908, *ak41o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18868 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–1–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, September 29, 2005, 8:30 a.m. to September 30, 2005, 5 p.m., The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037 which was published in the **Federal Register** on August 24, 2005, 70 FR 49663–49664.

The meeting is cancelled due to the reassignment of the applications.

Dated: September 13, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–18860 Filed 9–20–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–21472]

Collection of Information Under Review by Office of Management and Budget (OMB): 1625–0028 (Formerly 2115–0111), 1625–0034 (Formerly 2115–0139), and 1625–0043 (Formerly 2115–0540).

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded three Information Collection Requests (ICRs)—(1) 1625–0028, Course Approvals for Merchant Marine Training Schools, (2) 1625–0034, Ships' Stores Certification for Hazardous Materials Aboard Ships, and (3) 1625–0043, Ports and Waterways Safety—Title 33 CFR Subchapter P— abstracted below, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before October 21, 2005.

ADDRESSES: To make sure that your comments and related material do not reach the docket [USCG–2005–21472] or OIRA more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th St NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2298 and (b) OIRA at (202) 395–6566, or e-mail to OIRA at *oira-docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

Copies of the complete ICRs are available through this docket on the Internet at *http://dms.dot.gov*, and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Ms. Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Davis, Office of Information Management, telephone (202) 267–2326 or fax (202) 267–4814, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would

appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to DMS or OIRA must contain the OMB Control Number of the Information Collection Requests (ICRs) addressed. Comments to DMS must contain the docket number of this request, [USCG 2005–21472]. For your comments to OIRA to be considered, it is best if OIRA receives them on or before the October 21, 2005.

Public participation and request for comments: We encourage you to respond to this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov*, and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2005–21472], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**, but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

The Coast Guard and OIRA will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Previous Request for Comments.

This request provides a 30-day comment period required by OIRA. The Coast Guard has already published the 60-day notice (70 FR 38702, July 5, 2005) required by 44 U.S.C. 3506(c)(2). That notice elicited no comment.

Information Collection Request

1. *Title:* Course Approvals for Merchant Marine Training Schools.
OMB Control Number: 1625–0028.
Type of Request: Extension of a currently approved collection.
Affected Public: Merchant marine training schools.
Forms: None.
Abstract: The information is needed to ensure that merchant marine training schools meet minimal statutory requirements. The information is used to approve the curriculum, facility, and faculty for these schools.
Burden Estimate: The estimated burden has been increased from 16,988 hours to 27,675 hours a year.

2. *Title:* Ships' Stores Certification for Hazardous Materials Aboard Ships.
OMB Control Number: 1625–0034.
Type of Request: Extension of a currently approved collection.
Affected Public: Suppliers and manufacturers of hazardous products used on ships.
Forms: None.
Abstract: The information is needed to ensure that personnel aboard ships are made aware of the proper usage and stowage instructions for certain hazardous materials. Provisions are made for waivers of products in special DOT hazard classes.
Burden Estimate: The estimated burden has been increased from 6 hours to 9 hours a year.

3. *Title:* Ports and Waterways Safety—Title 33 CFR Subchapter P.
OMB Control Number: 1625–0043.
Affected Public: Master, owner, or agent of a vessel.
Forms: None
Abstract: This collection of information allows the master, owner, or agent of a vessel affected by these rules to request deviation from the requirements governing navigation safety equipment to the extent that there is no reduction in safety.
Burden Estimate: The estimated burden has been increased from 2,929 hours to 3,171 hours a year.

Dated: September 13, 2005.

R.T. Hewitt,

Rear Admiral, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 05–18804 Filed 9–20–05; 8:45 am]
BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–45]

Notice of Submission of Proposed Information Collection to OMB; Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record

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.

This is a request for approval to continue the request for the subject information from the public.

Builders must certify HUD insured structures are free of termite hazards. An authorized pest control company must perform treatments for termites. The builder guarantees the treated area against infestation for one year.

DATES: *Comments Due Date:* October 21, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0525) 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: Builder's Certification/Guarantee and New Construction Subterranean Termite Soil Treatment Record.

OMB Approval Number: 2502–0525.

Form Numbers: HUD–NPCA–99–A and HUD–NPCA–99–B.

Description of the Need for the Information and its Proposed Use: Builders must certify HUD insured structures are free of termite hazards. An authorized pest control company must perform treatments for termites. The builder guarantees the treated area against infestation for one year.

Frequency of Submission: On occasion.

Reporting Burden: No reporting burden is claimed. A reassessment of the burden for this information collection has led to the determination that the information is a standard and usual business practice. The collection of this information is an industry-wide standard, not solely an FHA requirement. Frequency of use for FHA transactions is estimated at 54,000 annually.

Total Estimated Burden Hours: 0.

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: September 14, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–18744 Filed 9–20–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–46]

Notice of Submission of Proposed Information Collection to OMB; Loss Mitigation Evaluation

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.

Mortgagees servicing HUD insured mortgages are required to document all loss mitigation efforts for delinquent loans and to submit the documentation to HUD if requested.

DATES: *Comments Due Date:* October 21, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0523) 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: Loss Mitigation Evaluation.

OMB Approval Number: 2502–0523.

Form Numbers: None.

Description of the Need For the Information and Its Proposed Use: Mortgagees serving HUD insured mortgages are required to document all loss mitigation efforts for delinquent loans and to submit the documentation to HUD if request.

Frequency of Submission: On Occasion.

Reporting Burden:

Number of respondents	Annual responses	×	Hours per response	=	Burden hours
600	778.5		0.250		116,784

Total Estimated Burden Hours: 116,784.

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: September 15, 2005.

Donna L. Eden,

Director, Office of Policy and E-Government, Office of the Chief Information Officer.

[FR Doc. 05–18745 Filed 9–20–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Barton Springs Salamander Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the approved Barton Springs Salamander Recovery Plan (Recovery Plan). The Barton Springs salamander (*Eurycea sosorum*) is known to occur near four spring outlets that collectively make up Barton Springs in Austin, Texas. Habitat loss and modification from water quality and water quantity degradation are the primary threats facing the species. The Recovery Plan outlines the necessary criteria, objectives, and tasks to reduce these threats and accomplish the goal of delisting the Barton Springs salamander.

ADDRESSES: A copy of the Recovery Plan may be requested by contacting the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas, 78758. The Recovery Plan may also be obtained from the Internet at: *http://www.fws.gov/endangered/recovery/.*

FOR FURTHER INFORMATION CONTACT: Field Office Supervisor, Austin Ecological Services Field Office, at the above address; telephone (512) 490–0057, facsimile (512) 490–0974.

SUPPLEMENTARY INFORMATION:

Background

The Barton Springs salamander (*Eurycea sosorum*) was listed as endangered on May 30, 1997, under authority of the Endangered Species Act of 1973, as amended (Act) (62 FR 23377). The water that discharges from Barton Springs is essential to the survival of the salamander. It originates from the Barton Springs segment of the Edwards Aquifer, a karst limestone aquifer containing a complex system of caves, sinkholes, fractures, and faults. The Edwards Aquifer is particularly vulnerable to contamination and land use changes that degrade the quality of storm water runoff. The primary threat facing the survival and recovery of this species is the degradation of water quality and quantity of water that feeds Barton Springs, as a result of urbanization over the Barton Springs watershed (including roadway, residential, commercial, and industrial development). The Recovery Plan includes information about the species, its habitat, and current conservation efforts. Further, it provides recovery criteria that, when reached, will signify that the species has recovered to a point where it no longer warrants listing as endangered or threatened. Recovery actions are provided to guide recovery implementation and achieve recovery criteria.

Reclassification from endangered to threatened (downlisting) will be considered when the following recovery criteria have been met: (1) Mechanisms (such as laws, rules, regulations, and cooperative agreements) are in place to ensure non-degradation of water quality in the Barton Springs watershed; (2) a plan to avoid, respond to, and remediate hazardous materials spills within the Barton Springs watershed is in place with high priority measures implemented to minimize risks to the Barton Springs salamander to a low level; (3) measures to ensure that continuous, natural springflows are maintained at all four spring outlets are in place and succesful; (4) a healthy, self-sustaining natural population of Barton Springs salamanders is maintained within its historical range; (5) measures to remove local threats to the Barton Springs ecosystem have been implemented; (6) captive populations of Barton Springs salamanders have been established in secure locations under the direction of a Captive Propagation and Contingency Plan.

The Recovery Plan proposes delisting of the Barton Springs salamander when the downlisting criteria have been achieved and the following additional recovery criteria have been met: (1) Water quality protection mechanisms are shown to be effective and commitments are in place to continue protection; (2) measures to implement the catastrophic spill avoidance, response and remediation plans are ensured; (3) measures to maintain adequate springflows are shown to be effective; (4) the Barton Springs salamander population is shown to be viable and stable or increasing; (5) measures to remove local threats to the Barton Springs ecosystem are shown to be effective and a commitment is in place to continue the appropriate management of the surface habitat; (6) captive breeding is shown to be effective and reliable and commitments are in place to maintain adequate captive populations for any needed restoration work.

Due to the Barton Springs salamander's reliance on continuous flow of clean spring water, many of the high-priority recovery tasks outlined in the Recovery Plan are designed to ensure adequate water quality and quantity within the Barton Springs watershed, such as: (1) Developing and implementing catastrophic spill avoidance, response, and remediation plans; (2) implementing programs to protect sensitive environmental features important to salamander habitat or the effective recharge of clean water such as caves, sinkholes, fissures, springs, and riparian zones; (3) developing and implementing programs to identify and correct problems from point and non-point source pollution discharges; and (4) creating a regional management program that will be used to ensure the protection of aquifer level and springflows under normal and drought conditions. Other high-priority recovery actions include ensuring protection for existing spring habitats and establishing and maintaining adequate captive breeding populations.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of listed species, establish criteria for downlisting or delisting those species, and estimate time and cost for implementing the recovery measures needed.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service considers all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and others also take these comments into account in the course of implementing recovery plans.

Authority: This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 18, 2005.

Larry G. Bell,

Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 05–18789 Filed 9–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of the Record of Decision for the Final Comprehensive Conservation Plan and Final Environmental Impact Statement for Maine Coastal Islands National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Decision and Availability of the Record of Decision for the Final Comprehensive Conservation Plan and Final Environmental Impact Statement for the Maine Coastal Islands National Wildlife Refuge, formerly known as Petit Manan National Wildlife Refuge Complex.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a Notice of Decision and Availability of the Record of Decision (ROD) for Maine Coastal Islands National Wildlife Refuge (NWR) Final Comprehensive Conservation Plan (CCP) and Final Environmental Impact Statement (EIS). The refuge is located in the Gulf of Maine watershed, which extends along the entire coast of Maine. The Final EIS presents a thorough analysis of environmental, social, and economic considerations. The CCP and EIS were released to the public for 30 days after the publication of a Notice of Availability in the **Federal Register** on July 15, 2005 (70 FR 135). The ROD documents the selection of Alternative B (the Service-preferred alternative) in the Final EIS, which is represented by the Final CCP for the refuge. The ROD was signed by the Regional Director, U.S. Fish and Wildlife Service, Northeast Region, on August 24, 2005.

ADDRESSES: A copy of the ROD may be obtained from Charles Blair, Refuge Manager, Maine Coastal Islands National Wildlife Refuge, P.O. Box 279, Water Street, Milbridge, Maine 04658–0279, or you may call Mr. Blair at 207–546–2124. A copy of the final CCP and EIS is available at the following Web site: *http://library.fws.gov/ccps.htm.*

FOR FURTHER CONTACT INFORMATION: Charles Blair, Refuge Manager, Maine Coastal Islands National Wildlife Refuge, P.O. Box 279, Water Street, Milbridge, Maine 04658–0279, 207–546–2124 (telephone), 207–546–7805 (FAX).

SUPPLEMENTARY INFORMATION: The following is a summary of the ROD, which selects Final EIS Alternative B, represented by the Final CCP, for the Maine Coastal Islands NWR. The CCP provides management guidance that conserves refuge resources and facilitates compatible wildlife-dependent public use activities during the next 15 years.

The CCP addresses key issues and conflicts identified during the planning process, and will best achieve the purposes and goals for each of the five refuges in this complex, as well as the mission of the National Wildlife Refuge System (NWRS). The decision includes the management goals, objectives, and strategies identified in CCP chapter 4, ''Management Direction,'' and in the compatibility determinations (Appendix C). The implementation of the CCP will occur over the next 15 years, depending on future staffing levels, funding, and willing sellers of the lands proposed for acquisition.

Factors Considered in Making the Decision:

The decision was based on a thorough analysis of environmental, social, and economic considerations. The Service reviewed and considered the impacts identified in chapter 4 of the Draft and Final EIS; the results of various studies and surveys conducted, or technical expert advice received in conjunction with the Draft and Final EIS and CCP; relevant issues, concerns, and opportunities; comments on the draft and final planning documents; and other relevant factors, including the purposes for which the refuges were established and statutory and regulatory guidance. The Final EIS and CCP address a variety of needs, including fish and wildlife conservation, habitat restoration and protection, National Wilderness Preservation System designation, refuge expansion, and the six priority public uses of the National Wildlife Refuge System Improvement Act of 1997. The unique combination of those components contributes significantly to achieving refuge purposes and goals. The CCP also strengthens the monitoring of fish, wildlife, habitat, and public uses on refuge lands to provide the means to better respond to changing conditions in the surrounding landscape.

The Final CCP, was selected for implementation because it provides the greatest number of opportunities for the NWRS to contribute to fish, wildlife, and habitat conservation needs along the Maine coast.

Dated: August 24, 2005.

Richard O. Bennett,

Acting Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 05–18787 Filed 9–20–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–058–04–1610–DR–241E]

Notice of Availability of the Record of Decision and Resource Management Plan for the Red Rock Canyon National Conservation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Record of Decision (ROD) and Resource Management Plan (RMP).

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) management policies, and the Red Rock Canyon National Conservation Area Establishment Act, the BLM announces the availability of the ROD/RMP for Red Rock Canyon National Conservation Area (RRCNCA). The Nevada State Director will sign the ROD/RMP, which becomes effective immediately.

ADDRESSES: Copies of the ROD/RMP are available upon request from the Red Rock Canyon National Conservation Area Manager, Timothy P. O'Brien, Las Vegas Field Office, Bureau of Land Management, 4701 N. Torrey Pines Ave, Las Vegas, NV 89130 or via the Internet at: *http://www.nv.blm.gov/vegas.* Copies can also be requested by calling (702) 515–5000.

FOR FURTHER INFORMATION CONTACT: Timothy P. O'Brien, Red Rock Canyon National Conservation Area Manager, 4701 N. Torrey Pines, Las Vegas, NV 89130, or by telephone at (702) 515–5058, email *Timothy_O'Brien@blm.gov*.

SUPPLEMENTARY INFORMATION: The RMP describes the actions to conserve, protect, and enhance the endangered species, wilderness characteristics, unique geological, archeological, ecological, cultural, and recreation resources that are encompassed within the RRCNCA for the benefit and enjoyment of present and future generations. The RRCNCA ROD/RMP

provides management decisions for 197,000 acres.

Juan Palma,

Field Manager, Las Vegas.

[FR Doc. 05–18973 Filed 9–20–05; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–05–1310–DB]

Notice of Meeting of the Pinedale Anticline Working Group

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (1976) and the Federal Advisory Committee Act (1972), the U.S. Department of the Interior, Bureau of Land Management (BLM) Pinedale Anticline Working Group (PAWG) will meet in Pinedale, Wyoming, for a business meeting. Group meetings are open to the public.

DATES: The PAWG will meet October 25, 2005, from 9 a.m. until 5 p.m.

ADDRESSES: The meeting of the PAWG will be held in the Lovatt room of the Pinedale Library, 155 S. Tyler Ave., Pinedale, WY.

FOR FURTHER INFORMATION CONTACT: Mike Stiewig, BLM/PAWG Liaison, Bureau of Land Management, Pinedale Field Office, 432 E. Mills St., P.O. Box 738, Pinedale, WY 82941; (307) 367–5363.

SUPPLEMENTARY INFORMATION: The Pinedale Anticline Working Group (PAWG) was authorized and established with release of the Record of Decision (ROD) for the Pinedale Anticline Oil and Gas Exploration and Development Project on July 27, 2000. The PAWG advises the BLM on the development and implementation of monitoring plans and adaptive management decisions as development of the Pinedale Anticline Natural Gas Field proceeds for the life of the field.

The agenda for this meeting will include discussions concerning any modifications task groups may wish to make to their monitoring recommendations, a discussion on monitoring funding sources, and overall adaptive management implementation as it applies to the PAWG. At a minimum, public comments will be heard prior to lunch and adjournment of the meeting.

Dated: September 14, 2005.

Priscilla Mecham,

Field Office Manager.

[FR Doc. 05–18877 Filed 9–20–05; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft South Denali Implementation Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the Draft South Denali Implementation Plan and Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) announces the availability of the Draft South Denali Implementation Plan and Environmental Impact Statement (EIS) for Denali National Park and Preserve. The document describes and analyzes the environmental impacts of a preferred alternative and one action alternative for expanding visitor facilities and access opportunities in the south Denali region. A no action alternative also is evaluated. This notice announces the 60-day public comment period and solicits comments on the draft plan and EIS.

DATES: Written comments on the draft plan and EIS must be received no later than November 21, 2005.

ADDRESSES: Comments on the draft plan and EIS should be submitted to the Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755. Submit electronic comments to *http://parkplanning.nps.gov.* The draft EIS may be viewed online at *http://www.southdenaliplanning.com.* Hard copies or CDs of the Draft South Denali Implementation Plan and EIS are available by request from the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Mike Tranel, Chief of Planning, Denali National Park and Preserve. Telephone: (907) 644–3611.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) in cooperation with the State of Alaska, and Matanuska Susitna Borough has prepared a draft implementation plan and accompanying EIS for expanded visitor facilities and access opportunities in the south Denali region. The purpose of the plan and EIS is to address the needs of a growing visitor population in the south Denali region for the next two decades. The south Denali region is defined to include the southern portions of Denali National Park and Preserve, Denali State Park in its entirety, and adjoining lands owned and managed by the State of Alaska and the Matanuska Susitna Borough. The implementation plan and EIS was initiated to address the rapidly growing level of visitation, resource management concerns, and anticipated demand for future uses of public lands in the south Denali region.

The draft plan and EIS includes a range of alternatives based on planning objectives, environmental resources, and public input. Each alternative represents a development concept that addresses the needs and concerns of the land managers, local communities, and visitors. Two alternatives in addition to a no-action alternative were developed.

Alternative A (No Action): Under Alternative A, no new actions would be implemented to support the 1997 Record of Decision for the South Side Denali Development Concept Plan except for those projects already approved and initiated. This alternative represents no change from current management direction and therefore represents the existing condition in the south Denali region. However, it does not ensure a similar future condition which could be affected by factors unrelated to this planning effort.

Alternative B: This destination facility in the Peters Hills would serve package tourism, the independent traveler, local school groups, and Alaskan travelers. Access to this facility would be from the Trapper Creek area on the Petersville Road, and a new, seven mile access road. The vision is for a high quality facility that offers a range of opportunities for learning and recreating during the summer months. Development of campgrounds, enhancements to local trail systems and road corridors, and increased interpretive signage are also components of this alternative.

Alternative C (Preferred Alternative): This destination facility would be reached by a new four mile access road from the George Parks Highway, and would serve package tourism, the independent traveler, local school groups, and Alaskan travelers. The vision is for a high quality facility that offers a range of opportunities for learning and recreating from late spring to early fall. It would provide visitors of various abilities a chance to experience a subarctic tundra environment and opportunities to view Mount McKinley and the Alaska Range. Development of campgrounds, enhancements to local trail systems and road corridors, and increased interpretive signage are also components of this alternative.

Informational and Public Meetings

Informational meetings and public hearings will be scheduled in Alaska at the following locations: Anchorage, Fairbanks, Wasilla, Susitna Valley, and McKinley Village. The specific dates and times of the meetings and public hearings will be announced in local media. It is the practice of the National Park Service to make comments, including names and addresses of respondents, available for public review. An individual respondent may request that we withhold his or her address from the record, which we will honor to the extent allowable by law. If you wish to have NPS withhold your name and/or address, you must state this prominently at the beginning of your comments. NPS 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.

Dated: August 18, 2005.

Judy Gottlieb,

Acting Regional Director, Alaska.

[FR Doc. 05–18819 Filed 9–20–05; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Professional Consultants Insurance Company, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States* v. *Professional Consultants Insurance Company, Inc.*, Civil Action No. 1:05CV01272. On June 28, 2005, the United States filed a Complaint alleging that Professional Consultants Insurance Company, Inc., violated Section 1 of the Sherman Act, 15 U.S.C. 1. The proposed Final Judgment, filed the same time as the Complaint, requires Professional Consultants Insurance Company, Inc., to end its illegal information sharing activities and create a program to monitor its compliance with the antitrust laws. A proposed Amended Final Judgment was filed in substitution of, and to correct a drafting error in, the originally filed proposed Final Judgment. Copies of the Complaint, proposed Amended Final Judgment and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Room 200, Washington, DC 20530 and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, D.C. 20001.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark Botti, Chief, Litigation I Section, United States Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530 (telephone: 202–307–0001).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. Professional Consultants Insurance Company, Inc., Defendant

Case Number 1:05CV01272
Judge: Gladys Kessler
Deck Type: Antitrust
Date Stamp: 06/24/2005

Complaint

The United States of America, by its attorneys and acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendant Professional Consultants Insurance Company, Inc. to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. 1. The United States alleges as follows:

I. Jurisdiction and Venue

1. The United States brings this action to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. 1. The Court has jurisdiction over the parties to this action and of the subject matter pursuant to 15 U.S.C. 4 and 28 U.S.C. 1331, 1337 and 1345. Venue is proper in this District because Defendant has so stipulated.

II. Defendant

2. Defendant Professional Consultants Insurance Company, Inc. (''PCIC'') is a professional liability insurance company incorporated under the laws of Vermont. PCIC's principal business is to provide errors and omissions insurance coverage to its three shareholders, which PCIC calls, and hereafter will be referred to as, its ''members.'' Each of PCIC's three members is a major actuarial consulting firm doing business throughout the United States.

3. At all times relevant to this Complaint, PCIC has been managed and operated by directors, officers, and providers of professional services who concurrently served as directors, officers, or employees of its members.

4. The PCIC members each employ hundreds of professional actuaries throughout the country to serve, on a nationwide basis, clients that require actuarial consulting services. Actuarial consultants are professionals trained and skilled in mathematical and statistical analysis and management of financial and economic risks. Their clients are firms and organizations that require risk analysis and management in various financial and other contexts, including pension plans and other employee benefit plans organized to serve public or government employees, private corporate employees, and members of labor unions.

5. Apart from their joint ownership and management of PCIC, the three PCIC members operate actuarial consulting businesses separately and independently of, and in competition with, each other. Each of the three PCIC members is a major competitor of the others in the provision of actuarial consulting services to employee benefit plans.

III. Trade and Commerce

6. At all times relevant to this Complaint, PCIC has provided professional liability insurance coverage for claims against its members arising from actuarial consulting businesses conducted by its members, including the provision of actuarial consulting services to employee benefit plans, throughout the United States. These activities of PCIC and its members have been within the flow of, and have substantially affected, interstate commerce.

7. Employee benefit plans engage PCIC's members and other actuarial consulting firms to prepare actuarial risk valuations. Employee benefit plans rely on the work of actuarial consultants to determine employee benefit levels and employer contributions needed to fund the benefits. An error or omission in the work performed by an actuarial consultant can result in substantial monetary losses or other damages to the employee benefit client.

8. To cover exposure to liability claims of clients arising out of mistakes made in their actuarial work, PCIC members historically obtained professional errors and omissions liability insurance. Since the late 1980s and continuing to the present, PCIC has

annually provided each of its members with several millions of dollars of such coverage. In addition, the members have individually purchased substantial amounts of additional insurance coverage from commercial insurance companies.

IV. Claim for Relief

9. Until recently, the PCIC members generally provided actuarial consulting services to employee benefit clients under terms that did not limit a client's rights to recover damages suffered as a result of actuarial errors or omissions. Beginning in as early as the 1999–2000 time frame, PCIC, its members, and other actuarial consulting competitors began to experience increasing severity and frequency of liability claims arising out of their respective actuarial consulting business. To address the increasing claims experience, the PCIC members considered various ways to mitigate their exposure to liability claims, including instituting or improving professional peer review and other quality control procedures, as well as the use of contractual limitations of liability, or ''LOL,'' in client engagement agreements.

10. Clients that accept LOL in their actuarial consulting engagements are contractually bound to limitations on the amounts or types of damages that may be recoverable as a result of actuarial errors or omissions. Various formulations of LOL include liability ''caps'' precluding damages beyond a specified dollar amount, limitations based on a multiple of fees charged to clients, and limitations to ''direct damages,'' potentially precluding claims for consequential or other types of damages.

11. In marketplace rivalry among actuarial consulting firms, LOL is a significant basis of the firms' competition for clients and prospective clients. All else equal, a firm that does not require LOL can be at a significant competitive advantage in seeking a client's business over a competing firm that does require LOL. To the extent clients not disposed to accepting LOL can choose to engage actuarial consulting firms that do not require LOL, firms that might otherwise require LOL can be competitively disciplined or constrained from doing so by the potential loss of clients to non-LOL firms.

12. When the PCIC members began to consider implementing LOL, they recognized that unless and until LOL became a matter of widespread usage throughout the actuarial consulting profession, firms implementing LOL would face client resistance and potential loss of business to firms that had not implemented LOL. A senior official of one PCIC member noted that ''What I don't want to do is get so far ahead of the market openly, without specific calculation that 'now' is the time, that we become a competitive target.'' Another PCIC member was ''worried that they are way ahead * * * and fear that they are now at a competitive disadvantage.'' Employees of the third PCIC member had ''reservations about adopting these procedures [LOL] too quickly * * * [and] we don't want to lose clients by acting before our competitors do.''

13. The PCIC members also recognized that efforts on their part to implement LOL would be less exposed to client resistance and competitive loss of business if other actuarial competitors also began to implement LOL. To avoid being too far ''in front of the competition'' in implementing LOL, they needed to obtain information about what other actuarial consulting firms were doing or planning to do. Thus, for example, employees of one PCIC member urged restraint in implementing LOL, at least until the competitive situation could be determined: ''We respectfully do not wish to be the first * * * to adopt stringent limitations at the risk of losing our national prominence, let alone a significant amount of business. The losses could be devastating for some practices. Therefore, the [proposed] effective date is left open until further information about our competitors is known.''

14. Beginning as early as in 1999, the PCIC members discussed among themselves their respective consideration and implementation of plans to require LOL of their clients. These discussions took place on many occasions and in several contexts, including at meetings of PCIC's board of directors (comprised of senior officials of each of the PCIC members), at various ''PCIC owners meetings'' (also attended by senior officials of the PCIC members), in connection with a PCIC working group called the ''PCIC Malpractice Avoidance Committee,'' and other formal and informal communications among themselves.

15. In addition to enabling and facilitating LOL discussions among the three PCIC members, PCIC sponsored, organized, and conducted a series of profession-wide actuarial meetings, in March 2000, June 2001, and January 2003. These profession-wide meetings were attended by senior representatives not only of the PCIC members but also of five other actuarial firms that competed for employee benefit clients on a nationwide basis. At or in connection with each of these meetings, the attendees exchanged information about plans or efforts to implement LOL among actuarial consulting firms, including but not limited to the following:

a. At the March 2000 profession-wide meeting, a number of LOL implementation issues were discussed, including the use of dollar-based limits or multiples of fees, and possible ways of dealing with clients that resist the limitations. The use of LOL was described by one attendee as a ''best practice'' that certain of the actuarial consulting firms had begun using. Another attendee noted that ''there was an argument made for inclusion of a standard [LOL] clause [in client engagements]'' and that ''if more and more firms use this sort of approach, it will become standard.''

b. At the June 2001 profession-wide meeting, ''a member of firms discussed their own use of contractual safeguards and the clients' acceptance.'' One of the attendees recounted: ''Most firms have either begun implementing * * * or are actively considering [use of contractual safeguards] * * * One firm stated that it had made a firm-wide decision that it will no longer accept unlimited liability * * * We also discussed some ideas about implementing contractual safeguards, such as immediately requiring limitations for new clients and phasing in the requirements for existing clients * * * There seemed to be a consensus that * * * actuarial clients may complain about contractual safeguards but will accept them as they become more widespread.''

c. Shortly after the June 2001 profession-wide meeting, a senior official of one of the non-PCIC competitors at the meeting caused his firm to begin considering LOL implementation. This official, as part of the firm's consideration of LOL, requested and received from a PCIC official sample LOL language to help the firm develop LOL terms for its own client contracts.

16. In addition to the PCIC profession-wide meetings, PCIC and its members engaged in numerous other LOL discussions with representatives of other non-PCIC competitors, including but not limited to the following:

a. In October 2001, a PCIC official communicated with an official for one of the non-PCIC competitors that was represented at the PCIC profession-wide meetings but had not begun to implement LOL. The PCIC official advised that ''some consulting firms are beginning to implement limits of liability'' and encouraged the non-PCIC firm to do likewise: ''a strong argument

can be made that it is not in any firms' individual best interest to avoid implementing reasonable contractual safeguards.'' The official of the non-PCIC firm subsequently observed that the PCIC official ''feels strongly about the limits of liability and was upset that we were not seeking them,'' and thereafter the non-PCIC firm itself considered its own implementation of LOL.

b. In late 2001, one of the PCIC members was in the process of considering a proposed corporate policy to implement LOL, which it went on to adopt in February 2002. In December 2001, to facilitate adoption of the policy and acceptance among the firm's employees, a PCIC official circulated to the firm's employees a memorandum providing ''HIGHLY CONFIDENTIAL'' information about competitor's use of LOL and prospective plans to use LOL. The memorandum disclosed that the two other PCIC members had already begun to require LOL of their clients; that one of the non-PCIC competitors had plans to begin implementing LOL; that another competitor was attempting to implement LOL; and that yet another was ''strongly considering'' implementing LOL.

c. In early 2002, an employee benefit client of one of the PCIC members refused to accept proffered LOL terms and decided to seek competitive bids from other actuarial consulting firms in which LOL would not be required. After one of the non-PCIC competitors that attended the PCIC profession-wide meetings submitted a bid without LOL, a PCIC official found out about the firm's bid, was unhappy that the bid did not require LOL, and contacted a representative of the firm to express his displeasure.

d. In April 2002, a PCIC official discussed profession-wide LOL implementation with an official of a non-PCIC competitor. The PCIC official apprised the non-PCIC competitor of ongoing LOL implementation activities not only of the three PCIC members, but also those of two other competitors. In return, the official of the non-PCIC competitor disclosed LOL activities of his firm to the PCIC official.

e. At a professional association conference in September 2003, senior officials of two of the PCIC members and that of a non-PCIC competitor updated each other on the progress of their respective LOL implementation efforts. In the wake of this conversation, the non-PCIC official apprised a colleague at his firm of his discussions with the PCIC competitors, and urged his colleague to ''push hard to get liability limiting agreements wherever we can.''

17. Within the framework of the meetings and other communications alleged above, PCIC, its members, and other actuarial consulting competitors agreed among themselves to share competitively sensitive information about each others' plans and efforts to implement LOL. The sharing of this information eliminated or reduced competitive uncertainties and concerns about the potential for losing clients to firms not using LOL, and thus facilitated decisions of PCIC members and other competitors to begin implementing LOL.

18. The agreement to share LOL information alleged above has resulted in, among other things, the following effects:

a. Significant competition among PCIC members and other actuarial consulting firms with respect to liability terms of contracting with employee benefit clients has been restrained;

b. Employee benefit plan clients that have accepted LOL terms with PCIC members or other actuarial consulting firms have been deprived of the benefits of unrestrained competition in the setting of actuarial consulting contract terms;

c. The use of LOL terms in actuarial consulting contracts with employee benefit plans has been significantly more prevalent than would have been the case in the presence of unrestrained competition among the PCIC members and other actuarial consulting firms.

19. Unless permanently restrained and enjoined, PCIC and its members are free to continue, maintain, or renew the above-described sharing of competitively sensitive LOL information among themselves and other actuarial consulting competitors, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

VI. Prayer for Relief

Wherefore, the Plaintiff United States of America prays:

1. Adjudge the Defendant PCIC and its members as constituting and having engaged in an unlawful combination, or conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

2. Order that the Defendant PCIC, its members, and their respective officers, directors, employees, successors, and assigns, and all other persons acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing, or attempting to engage in, carry out, or renew the combination and conspiracy alleged herein, or any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

3. Award to plaintiff its costs of this action and such other and further relief as may be required and the Court may deem just and proper.

Dated: June 24, 2005.

Respectfully Submitted,

For Plaintiff United States of America

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Antitrust Division.

J. Bruce McDonald,
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Dorothy B. Fountain,
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United States District Court for the District of Columbia

United States of America, Plaintiff v. Professional Consultants Insurance Company, Inc., Defendant

Civil No. 1:05CV01272
Filed:

Amended Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on June 24, 2005, alleging Defendant's violation of Section 1 of the Sherman Act, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this final Judgment without trial or adjudication of any issue of fact or law, and without the Final Judgment constituting any evidence against or admission by Defendant, or any other entity, as to any issue of fact or law;

And Whereas, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prohibition of certain alleged information exchanging activities;

Now Therefore, before any testimony is taken, without trial or adjudication of any

issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed*:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this action. For purposes of this Final Judgment only, Defendant stipulates that the Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended (15 U.S.C. 1).

II. Definitions

A. ''PCIC'' means Professional Consultants Insurance Company, Inc., any of its successors and assigns, subsidiaries, divisions, affiliates, partnerships, and joint ventures, and any of their directors, officers, managers, agents, and employees when serving in such capacity.

B. ''PCIC member'' or ''member'' means any current shareholder of PCIC, any shareholder added to PCIC membership at any time during the term of this Final Judgment, any of such shareholders' successors and assigns, any of their subsidiaries, divisions, partnerships, and any of their directors, officers, managers, agents, and employees when serving in such capacity.

C. ''PCIC business requirements'' means rating, assessing, or underwriting professional liability insurance for current PCIC members or firms under consideration for PCIC membership; allowing PCIC board members to make informed decisions about whether to accept or deny membership as to prospective members; preparing reinsurance submissions and responding to reinsurers' requests for information; allowing PCIC board members to evaluate PCIC's risk profile, the risk profile of firms under consideration for PCIC membership and otherwise meet fiduciary obligations to PCIC; allowing PCIC members to make informed decisions about continued participation in PCIC or potential members to make informed decisions about participating in PCIC; and responding to requests for information by auditors and regulatory agencies.

D. ''Actuarial consulting services'' means any actuarial services provided by actuarial consulting firms to any clients of such firms, including but not limited to any such services relating to employee benefit plans.

E. ''Aggregated information'' means information that reflects aggregation of information as to different clients, transactions, or service offerings. ''Aggregated information'' does not include information that is specific to individual identifiable clients or transactions.

F. ''Agreement'' means any agreement or understanding, formal or informal, oral or written.

G. ''Communicate'' means to provide, disclose, disseminate, solicit, share, or exchange information in any manner or form, including by oral, written, or electronic means.

H. ''LOL'' means contractual limitations of liability in the provision of actuarial consulting services.

I. ''LOL information'' means information about an actuarial consulting firm's use of LOL and information regrading an actuarial consulting firm's plans, policies or practices relating to its use of LOL.

J. ''Prohibited LOL Information'' means current, client specific information about an actuarial firm's use of LOLs and information regarding an actuarial firm's current or future plans, policies or practices relating to its use of LOLs.

III. Applicability

A. This Final Judgment applies to PCIC, as defined above each consenting PCIC member individually, and all other persons in active concert or participation with PCIC who receive actual notice of this Final Judgment by personal service or otherwise.

B. PCIC shall require, as a condition of membership in PCIC, that each PCIC member consent to be bound by the Judgment, throughout the term of the Judgment, regardless of whether the member continues or discontinues PCIC membership or whether PCIC continues or ceases to exist as an entity.

IV. LOL Provisions

A. PCIC shall not communicate LOL information to any PCIC member or other representative of PCIC, or to any representative of any PCIC member, except as limited to the following extent:

1. PCIC's Antitrust Compliance Office, to be established by PCIC pursuant to ¶ V.A. of this Final Judgment, and/or an independent third party working with PCIC's Antitrust Compliance Office, and in a format approved by PCIC's Antitrust Compliance Office, may communicate historical and aggregated LOL information to members of PCIC's board of directors (including alternate directors), professional and administrative service providers working for PCIC, and the respective senior management of PCIC's members regularly involved in decision-making with respect to PCIC's business requirements, solely for purposes of an only as reasonably necessary to accomplish PCIC business requirements. PCIC's Antitrust compliance Office may also communicate historical and aggregated LOL information to a prospective member of PCIC if requested by the prospective member for the purpose of making an informed decision about participating in PCIC.

2. LOL information communicated pursuant to ¶ IV.A.1. of this Final Judgment shall be labeled ''Confidential; Disclosure and Usage Subject to PCIC's Antitrust Compliance Office,'' and shall be preserved and maintained by PCIC's Antitrust Compliance Office ready for possible inspection by or production to the United States.

3. Except to serve a purpose for which the information was communicated pursuant to ¶ IV.A.1., recipients of LOL information communicated pursuant to ¶ IV.A.1 shall not further communicate any such information to any other PCIC member or to any representative of any other provider of actuarial consulting services, and shall not further communicate or use any such information in any manner.

B. A PCIC member may communicate to PCIC's Antitrust compliance Office and/or the independent third party, not more than twice per calendar year, historical and aggregated information about its usage of LOLs, solely for purposes of and only as reasonably necessary to accomplish PCIC's business requirements.

C. PCIC shall not require any member to adopt, implement, maintain, or engage in any policies, plans, or practices relating to LOL usage, except that:

1. PCIC may use historical and aggregated LOL information to accomplish PCIC's business requirements.

2. PCIC may deny or exclude a member as to professional liability insurance coverage in excess of $15 million, but only if:

(a) Reinsurance to be obtained by PCIC for the denied or excluded coverage is conditioned upon usage of LOL and the member does not satisfy the conditions,

(b) Reinsurance to be obtained by PCIC for the denied for excluded coverage is not otherwise reasonably commercially available at a reasonable price,

(c) At the members' request, PCIC will continue to provide the member with primary coverage of not less than $15 million,

(d) PCIC provides the United States with written notice of the facts and circumstances of such denial or exclusion within ten business days of the denial or exclusion to the member, and

(e) PCIC preserves and maintains ready for possible inspection or production all PCIC communications with reinsurers or members and other records relating to the exclusion or denial.

D. PCIC and its members shall not:

1. Enter into or participate in any agreement between or among any of themselves with respect to any actual or potential usage of LOL, provided that the United States will not assert a violation of this provision based solely on parallel conduct of the PCIC members.

2. Enter into or participate in any agreement with any representatives of any non-member providers of actuarial consulting services with respect to any actual or potential usage of LOL.

3. Communicate with any representatives of any member or non-member providers of actuarial consulting services with respect to any Prohibited LOL Information.

E. Notwithstanding any provisions of this Final Judgment:

1. PCIC may obtain client-specific LOL information from a PCIC member to the extent reasonably necessary to discuss a specific actual or threatened professional liability claim against the member, even if the LOL information is Prohibited LOL Information.

2. PCIC members are not prohibited from unilaterally disclosing LOL information, including Prohibited LOL Information, to clients or prospective clients, to the press or news media, and in connection with SEC or other regulatory filings, or LOL information that is in the public domain. Moreover, PCIC members are not prohibited from disclosing or receiving LOL information, including Prohibited LOL Information, when conducting business with another actuarial consulting firm in a vendor-vendee relationship, or when communicating with affiliated actuarial consulting firms based in other countries.

3. PCIC and its members are not prohibited from engaging in conduct protected under the Noerr-Pennington doctrine.

4. PCIC members are not prohibited from conducting due diligence with respect to LOLs in connection with an actual or contemplated (a) acquisition of another actuarial consulting firm; (b) purchase of an actuarial consulting business from another actuarial consulting firm; or (c) sale of an actuarial consulting business to another actuarial consulting firm. Moreover, to the extent reasonably necessary, PCIC members are not prohibited from conducting due diligence with respect to LOLs in connection with an evaluation of whether to become a shareholder or member of an insurance company (captive or not) other than PCIC.

F. Nothing in this Final Judgment shall prohibit or interfere with PCIC's right to grant or deny coverage, or admit or deny new members, for any reason unrelated to a current or prospective PCIC member's use of LOLs.

V. Antitrust Compliance and Notification

A. PCIC shall establish an Antitrust Compliance Office, including appointment of an Antitrust Compliance Officer, within 30 days of entry of this Final Judgment, as follows:

1. The Antitrust Compliance Office established by PCIC shall be staffed and maintained independently of PCIC's members.

2. Each PCIC Antitrust Compliance Officer appointed pursuant to ¶ V.A. shall be an attorney with substantial experience with the antitrust laws and shall not have any other responsibilities with respect to PCIC's operations.

B. Each Antitrust Compliance Officer appointed pursuant to ¶ V.A. shall be responsible for establishing and implementing an antitrust compliance program for PCIC and ensuring PCIC's compliance with this Final Judgment, including the following:

1. The PCIC Compliance Officer shall furnish a copy of this Final Judgment (a) within thirty (30) days of entry of this Final Judgment to each director or officer of PCIC, each representative of a PCIC member working with PCIC, and each individual who receives LOL information pursuant to ¶ IV.A.1, and (b) within thirty (30) days to each person who succeeds to any such position.

2. The PCIC Compliance Officer shall obtain from each person designated in ¶ V.B.1. of this Final Judgment a signed certification that the person has read, understands, and agrees to comply with the provisions of this Final Judgment, to the best of his/her knowledge at the time the certification is made is not aware of any violation of this Final Judgment by PCIC that has not already been reported to the PCIC Compliance Officer, and understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

3. Upon learning of any potential violation of any provision of this Final Judgment, the PCIC Compliance Officer shall forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment. Any such action shall be reported in the annual compliance report required by ¶ V.B.4. of this Final Judgment.

4. For each year during the term of this Final Judgment, on or before the anniversary date of this Final Judgment, the PCIC Compliance Officer shall file with the United States a report as to the fact and manner of its compliance with the provisions of this Final Judgment. In addition, the report must identify any individual who received LOL information pursuant to ¶ IV.A.1.

C. PCIC shall require, as a condition of membership in PCIC, that each PCIC member agree to establish an antitrust compliance program within 90 days of the entry of this Final Judgment, or with respect to a new PCIC member within 90 days of membership. Each PCIC member's antitrust compliance program must include the policies and procedures described in ¶ V.B.1–4.

D. PCIC shall cause to be published a written notice in the form attached an Appendix to this Final Judgment, in Pensions & Investments and in Pensions & Investments Online, within sixty (60) days of the entry of this Final Judgment.

VI. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the PCIC and its members, be permitted:

1. Access during PCIC's and its members' office hours to inspect and copy, or at the United States' option, to require PCIC and its members to provide copies of all books, ledgers, accounts, records, and documents in their possession, custody, or control, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, PCIC's and its members' officers, employees, or other representatives, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by PCIC or its members.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, PCIC and its members shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at this time information or documents are furnished by PCIC or a PCIC member to the United States, PCIC or the member represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and PCIC or the member marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the United States shall give ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party or any PCIC member that consents to be bound by this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and punish violations of its provisions.

VIII. Public Interest Determination

Entry of this Final Judgment is in the public interest.

IX. Term

This Final Judgment shall expire ten (10) years after the day of its entry.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

Appendix

On June 24, 2005, the United States Department of Justice filed a civil suit alleging that Professional Consultants Insurance Company (''PCIC'') has engaged in certain practices in violation of Section 1 of the Sherman Act. PCIC is a Vermont-based captive insurance company that provides professional liability insurance to three actuarial consulting firms (hereafter referred to as ''PCIC''). PCIC has agreed to entry of a civil consent decree to settle this matter. The consent decree does not constitute evidence or admission by any party with respect to any issue of fact or law. The consent decree applies to PCIC and its consenting members, as well as their directors, officers, managers, agents, and employees.

The Justice Department's suit alleges that PCIC and its members engaged in the sharing of competitively sensitive information relating to the use of contractual limitations of liability (or ''LOL'') in actuarial consulting engagements with pension funds and other employee benefit plans. The consent decree is aimed at prohibiting PCIC and its members from sharing LOL information among themselves, or with other providers of actuarial consulting services.

Among other things, the consent decree prohibits PCIC and its members from

communicating among themselves with respect to LOL information, except to a specified extent and subject to safeguards reflecting PCIC's reasonable need for use of LOL information to provide its members with professional liability insurance coverage. The consent decree also prohibits PCIC and its members from entering into or participating in any agreement, among themselves or with any other providers of actuarial consulting services, with respect to any actual or potential use of LOL; and it prohibits PCIC and its members from communicating with other providers of actuarial consulting services with respect to any firm's current or future plans, policies, or practices relating to the use of LOLs. Under the consent decree, PCIC must require, as a condition of PCIC membership, that its members be fully bound by the terms of the decree. In addition, the consent decree also requires PCIC and its members to establish antitrust compliance programs and notification procedures.

Interested persons may address comments to Mark J. Botti, Chief, Litigation I Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 4000, Washington, DC 20530, within 60 days of the date of this notice.

United States District Court for the District of Columbia

United States of America, Plaintiff v. Professional Consultants Insurance Company, Inc., Defendant

CASE NUMBER: 1:05CV01272
JUDGE: Gladys Kessler
DECK TYPE: Antitrust
DATE STAMP:

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Amended Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 24, 2005, the United States filed a civil antitrust Complaint against Professional Consultants Insurance Company, Inc. (''PCIC''), alleging that PCIC, three actuarial consulting firms that own and manage PCIC, and other actuarial consulting firms agreed among themselves to share competitively sensitive information about their use of contractual limitations of liability in violation of Section 1 of the Sherman Act.

The United States has also filed a proposed Amended Final Judgment,[1] designed to prevent the continuation and eliminate the anticompetitive effects of the violation alleged in the Complaint. The proposed Amended Final Judgment, which is explained more fully below, aims to prevent PCIC and its members from sharing limitations of liability information among themselves, or with other providers of actuarial consulting services, in a manner that may significantly lessen competition.

The United States and PCIC have stipulated that the proposed Amended Final Judgment may be entered after compliance with the APPA. Entry of the proposed Amended Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Amended Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation

A. PCIC, Its Members, and the Actuarial Consulting Marketplace

PCIC is a professional liability insurance company owned and managed jointly by three actuarial consulting firms (which call themselves, and are hereinafter referred to as, PCIC ''members''). PCIC's principal business is to provide errors and omissions insurance coverage to its members, each of which is a major nationwide provider of actuarial consulting services. The clients of PCIC's members are firms and organizations that require actuarial financial risk analysis and management, including pension funds and other employee benefit plans serving public or government employees, private corporate employees, and members of labor unions.

Apart from their joint ownership and management of PCIC, the three PCIC members are major competitors of each other, particularly in the provision of actuarial consulting services to employee benefit plans. In addition to the PCIC members, six other actuarial consulting firms compete on a nationwide basis to provide actuarial services to employee benefit plans. Actuarial consulting firms gauge their competitive positions based on their shares of clients among industry-published lists of the 1,001 largest U.S. employee benefit plans. Based on recent data obtained by the United States, the three PCIC members' combined share of the top 1,000 plans is about 35 percent, and the combined share of all nine national competitors is about 96 percent.

The actuarial consulting firms also evaluate their market positions with reference to three distinct types of employee benefit clients: plans established by corporations or private companies (referred to as ''corporate plans''); plans of public or government entities (''public plans''); and plans established by labor organizations and funded by multiple employers (''multi-employer plans''). Recent data indicates that the PCIC members collectively account for about 40 percent of all corporate plans among the top 1,000 plans, and that the combined share of PCIC members and three other firms exceeds 90 percent. One PCIC member and four other firms have about 92 percent of the top 1,000 public plans. Two PCIC members and three other firms have about 91 percent of the top 1,000 multiemployer plans.

B. Anticompetitive Exchange of Information on Limitations of Liability

As alleged in the Complaint, the work performed by actuarial consulting firms for employee benefit clients include risk valuations used to determine employee benefit levels and employer contributions needed to fund the benefits. In such cases, an actuarial error or omission can result in substantial monetary losses or other damages to the client. Until recently, PCIC's members generally served their clients under terms that did not limit a client's right to recover damages suffered as a result of actuarial errors or omissions. To cover exposure to liability claims of clients arising out of mistakes made in their actuarial work, the members historically obtained professional errors and omissions liability insurance.

As actuarial consulting firms began to experience increasing severity and frequency of liability claims in 1999–2000, the PCIC members considered ways to mitigate their exposure to liability claims. Among other things, they considered instituting or improving professional peer review and other quality control procedures, and they considered using contractual limitations of liability, or ''LOL,'' in client engagement agreements. Clients accepting LOL are contractually bound to limitations on the amounts or types of damages that may be recoverable as a result of actuarial errors or omissions.

The Complaint alleges that the PCIC members recognized that it made a difference whether they implemented LOL unilaterally or collectively, and whether they did so with or without a broad profession-wide movement toward LOL. They understood that unless and until LOL became a matter of widespread usage throughout the actuarial consulting profession, firms implementing LOL would face client resistance and potential loss of business to firms that had not implemented LOL. They also recognized that efforts on their part to implement LOL would be less exposed to client resistance and competitive loss of business if other actuarial competitors also began to implement LOL.

To avoid being ''in front of the competition,'' the PCIC members sought to obtain information about their competitors' plans with respect to LOL. To facilitate the use of LOL by other competitors, they also sought to make others aware of their own LOL implementation efforts. Accordingly, beginning as early as in 1999, the PCIC members engaged in numerous discussions among themselves and with non-PCIC competitors, including at a series of PCIC-sponsored profession-wide meetings, at which the firms disclosed to each other their respective ongoing and prospective LOL implementation policies, plans, and practices. This widespread sharing of LOL information was not motivated by any purpose of improving marketplace efficiency in the provision of actuarial consulting services, and in fact provided actuarial clients with no procompetitive benefits in their purchase of actuarial consulting services.

As alleged in the Complaint, PCIC, its members, and other actuarial consulting competitors unlawfully agreed among themselves to share competitively sensitive information about each other's plans and efforts to implement LOL. The challenged

[1] At the same time the Complaint was filed, the United States also filed a Stipulation and a proposed Final Judgment. In substitution of, and to correct a drafting error in, the originally filed proposed Final Judgment, the United States and PCIC jointly filed a proposed Amended Final Judgment concurrently with the filing of the Competitive Impact Statement.

exchange of LOL information facilitated at least tacit coordination of competitor's decisions to implement LOL. The major actuarial consulting firms have tended to concentrate their businesses among three client categories—corporate, public, and multi-employer—in a way that has resulted in extremely high concentrations of sales among just a few consulting firms in each of those categories. Moreover, competitive turnover of clients occurred relatively infrequently, and the consulting firms do not appear to have competed broadly or vigorously to take established clients away from each other. Given these conditions, unilateral attempts to implement LOL by any of the firms would have been competitively disruptive, prompting clients to seek competitive alternatives and potentially leading to abandonment of established client-consultant relationships. Such competitive disruption, from the consulting firms' perspective, would have been undesirable in causing erosion or shifting of the historical patterns of concentration and stability within the client categories, which could lead to increased price competition. Indeed, one purpose of the challenged conduct was to facilitate the use of LOL as a profession-wide ''standard'' while avoiding this competitive response, and its actual effect was to induce numerous clients to accept LOL that otherwise would not have done so.

III. Explanation of the Proposed Amended Final Judgment

The purpose of the proposed Amended Final Judgment is to prevent PCIC and its members from sharing LOL information among themselves, or with other providers of actuarial consulting services, in a manner that may significantly lessen competition. Application of the proposed Amended Final Judgment extends not only to PCIC but also to its members, through a requirement that PCIC obtain consent of its members to be bound by the proposed Amended Final Judgment as a condition of PCIC membership. The term of the proposed Amended Final Judgment is ten years from the date of its entry.

The proposed Amended Final Judgment Final Judgment seeks to prevent PCIC and its members from engaging in anticompetitive communications and uses of LOL information while at the same time allowing certain PCIC business requirements for LOL information that do not raise significant competitive concerns. PCIC and its members are thus constrained from communicating about their usage of LOL to the extent of and subject to specified limitations and safeguards as to allow PCIC's continued operation as a provider of professional liability insurance. PCIC is prohibited from requiring its members to implement LOL, also subject to limited allowances for PCIC to engage in reasonable business activities as a professional liability insurer.

The proposed Amended Final Judgment prohibits PCIC and its members from entering into or participating in any agreements among themselves or with any other provider of actuarial consulting services, as to any actual or potential use of LOL. In addition, PCIC and its members are barred from communicating with other providers of actuarial consulting services as to any firm's current or future plans, policies, or practices relating to the use of LOL. Other provisions of the proposed Amended Final Judgment require PCIC and its members to institute antitrust compliance programs, and to follow specified antitrust compliance and notification policies and procedures.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Amended Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Amended Final Judgment

The United States and Defendants have stipulated that the proposed Amended Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Amended Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Amended Final Judgment within which any person may submit to the United States written comments regarding the proposed Amended Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Amended Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to:

Mark J. Botti,
Chief, Litigation I Section,
Antitrust Division,
United States Department of Justice,
1401 H Street, NW., Suite 4000,
Washington, DC 20530.

The proposed Amended Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the proposed Amended Final Judgment.

VI. Alternatives to the Proposed Amended Final Judgment

The United States considered, as an alternative to the proposed Amended Final Judgment, proceeding to a full trial on the merits of its Complaint. The United States is satisfied, however, that the relief contained in the proposed Amended Final Judgment will reestablish and maintain competition among actuarial consulting firms with respect to liability terms of contracting with clients. In so doing, entry of the proposed Amended Final Judgment will avoid the time, expense and uncertainty of a full trial on the merits of the government's Complaint.

The United States considered, but did not require as an element of the negotiated settlement, prohibiting PCIC members from enforcing LOL terms that they have already obtained from clients. The United States concluded that barring the PCIC members from enforcing existing LOL terms is not necessary to remediate anticompetitive effects of the challenged conduct. In this respect, the harm to clients resulting from anticompetitive imposition of LOL is prospective and uncertain, and as the great majority of actuarial clients do not experience faulty actuarial work, would arise only infrequently. Rather than seeking broadly to prohibit the enforcement of existing LOL terms, the United States believes it sufficient that clients against whom LOL terms may ultimately be advanced will then have the opportunity to assert invalidation of the terms as having been unlawfully imposed.

The United States also considered but did not require the PCIC members to be barred from prospectively implementing LOL in new client engagements for a period of time, as a means of restoring market conditions pre-dating the conduct challenged in the Complaint. The United States determined such a measure to be unnecessary because at the present time significant competitive alternatives continue to exist for clients seeking to avoid LOL. One non-PCIC competitor, the largest actuarial consulting firm serving multi-employer clients, has to date chosen not to implement LOL. Another of the non-PCIC firms, which is the second leading competitor as to public clients and the third leading competitor as to corporate clients, has implemented a relatively less onerous form of LOL that purports to confine recovery to direct damages, rather than the more commonly used limitation to a fixed dollar amount or multiple of fees. Certain other firms that have begun implementing LOL have done so under policies that make

allowances for clients to avoid LOL in their contract negotiations.

VII. Standard of Review Under APPA for the Proposed Amended Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon a competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) and (B). As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

''Nothing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). Thus, in conducting this inquiry, ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney.[2] Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making it public interest finding, should* * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have *held* that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omited) (quoting *Gillette,* 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint; the APPA does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that cast.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: September __, 2005.

Washington, DC.

Respectfully submitted,

Mark J. Botti,
Chief, Litigation I Section.

Weeun Wang,
Ryan Danks,
U.S. Department of Justice, Antitrust Division, Litiation I Section, 1401 H Street, NW., Suite 4000, Washington, DC 20530, 202–307–0001.

Certificate of Service

I hereby certify that I served a copy of the foregoing Competitive Impact Statement via facsimile and first class United States mail, this 12th day of September, 2005, on: Paul C. Cuomo, Esq., Howrey LLP, 1299 Pennsylvania Avenue, NW., Washington, DC 20004–2402, Fax (202) 383–6610, Attorney for Defendant PCIC.

/s/

Ryan J. Danks,
Attorney, United States Department of Justice.

[FR Doc. 05–18703 Filed 9–20–05; 8:45 am]

BILLING CODE 4410–11–M

[2] *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (recognizing it was not the court's duty to settle; rather, the court must only answer ''whether the settlement achieved [was] within the reaches of the public interest).'' A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed by the Department of Justice pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. No 93–1463, 93rd Cong., 2d Sess. 8–9 (1974), *reprinted* in 1974 U.S.C.C.A.N. 6535, 6538.

[3] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *Gillette,* 406 F. Supp. at 716 (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 5–05]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, September 29, 2005, at 10 a.m.

SUBJECT MATTER: Issuance of Proposed Decisions in Claims Against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 05–18934 Filed 9–19–05; 11:31 am]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 13, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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 submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Application for Authority for an Institution of Higher Education to Employ Its Full-Time Students at Subminimum Wages Under Regulation 29 CFR Part 519.

OMB Number: 1215–0080.

Form Number: WH–201.

Frequency: Annually.

Type of Response: Reporting and recordkeeping.

Affected Public: Not-for-profit institutions and business or other for-profit.

Number of Respondents: 15.

Annual Reponses: 15.

Average Response Time: 30 minutes for initial applications and 15 minutes for renewals.

Total Annual Burden Hours: 5.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $6.00.

Description: Section 14(b) of the Fair Labor Standards Act, in part, authorizes the employment of full-time students in higher education at subminimum wages under certain conditions. The WH–201 application form provides the information necessary to ascertain whether the requirements of section 14(b) have been met.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Certificate of Medical Necessity.

OMB Number: 1215–0113.

Form Number: CM–893.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; and Individuals or households.

Number of Respondents: 4,000.

Annual Reponses: 4,000.

Average Response Time: 40 minutes for responses that involve a pulmonary function study; 20 minutes for responses that involve an arterial blood gas study; and 30 minutes for responses that involve submission of existing treatment records (**Note:** estimates include both reporting and related recordkeeping burden).

Total Annual Burden Hours: 1,567.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The enabling regulations of the Black Lung Benefits Act, at 20 CFR 725.701, establish miner eligibility for medical services and supplies for the length of time required by the miner's condition and disability. 20 CFR 725.706 stipulates there must be prior approval before ordering an apparatus where the purchase price exceeds $300.00. 20 CFR 725.707 provides for the ongoing supervision of the miner's medical care, including the necessity, character and sufficiency of care to be furnished; gives the authority to request medical reports and indicates the right to refuse payment for failing to submit any report required. Because of the above legislation and regulations, it was necessary to devise a form to collect the required information. The form is the CM–893, Certificate of Medical Necessity.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–18820 Filed 9–20–05; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 14, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–

4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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 submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Vinyl Chloride Standard (29 CFR 1910.1017).

OMB Number: 1218–0010.

Frequency: On occasion; Quarterly; Semi-annually; and Annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 80.

Number of Annual Responses: 2,743.

Estimated Time Per Response: Varies from 5 minutes for employers to maintain records to 12 hours for employers to update their compliance plans.

Total Burden Hours: 1,758.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $113,732.

Description: The Vinyl Chloride Standard (29 CFR 1910.1017), and its information collection requirements, is designed to provide protection for employees from the adverse health effects associated with occupational exposure to Vinyl Chloride (VC). The VC Standard requires employers to monitor employee exposure to vinyl chloride, monitor employee health and provide employees with information about their exposures, implement a written compliance plan, and maintain employee exposure and medical records.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 05–18821 Filed 9–20–05; 8:45 am]

BILLING CODE 4510–26–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Wednesday, 12 October 2005, and Thursday, 13 October 2005, from 8:30 a.m. to 6 p.m. The Commission and Committee will meet on Friday, 14 October 2005, from 8:30 a.m. to 4 p.m. The meetings are open to the public. The executive session of the Commission and the Committee meeting will be held on Friday, 14 October 2005, from 4:30 p.m. to 6:30 p.m.

PLACE: Anchorage Hilton Hotel, 500 West Third Avenue, Anchorage, Alaska 99501; telephone: 907–272–7411; fax: 907–265–7140.

STATUS: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters. While subject to change, major issues that the Commission plans to consider at the meeting include the effects of climate change, coastal development, and contaminants and disease on marine mammal populations; Alaska Native subsistence and co-management; issues related to fishing and interactions with marine mammals; and conservation of certain marine mammal species, including Stellar sea lions, northern fur seals, harbor seals, ice seals, Pacific walruses, polar bears, sea otters, Cook Inlet beluga whales, North Pacific right whales, and bowhead whales.

FOR MORE INFORMATION CONTACT: David Cottingham, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, 301–504–0087.

Dated: September 19, 2005.

David Cottingham,

Executive Director.

[FR Doc. 05–18950 Filed 9–19–05; 12:15 pm]

BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–143)]

NASA Advisory Committee; Notice of Renewal

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of renewal of the charter for the NASA Advisory Council.

SUMMARY: Pursuant to sections 14(b)(1)and 9(c) of the Federal Advisory Committee Act (Public Law 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration (NASA) has determined that a renewal and amendment of the Charter for the Agency-established NASA Advisory Council is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. In connection with this renewal, a number of amendments have been made to the Charter as part of the overall restructuring of the NASA Advisory Council. The purpose of the NASA Advisory Council is to provide advice and make recommendations to the NASA Administrator on Agency programs, policies, plans, financial controls and other matters pertinent to the Agency's responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4510.

Dated: September 14, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–18846 Filed 9–20–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel—Notice of Change

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the October 3, 2005 teleconference meeting of the Arts Advisory Panel (AccessAbility) to the National Council on the Arts, previously announced as 2 p.m. to 4 p.m. e.d.t., will instead be held from 11 a.m. to 1 p.m. As announced, this meeting will be closed.

Closed meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated:September 14, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–18855 Filed 9–20–05; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506 as follows:

Arts Education (Learning in the Arts for Children & Youth Panel #4): October 17–19, 2005 in Room 716. A portion of this meeting, from 3:30 p.m. to 4:15 p.m. on Wednesday, October 19th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 17th and October 18th, and from 9 a.m. to 3:30 p.m. and from 4:15 p.m. to 5 p.m. on October 19th, will be closed.

Arts Education (Learning in the Arts for Children & Youth Panel #5): October 20–21, 2005 in Room 716. A portion of this meeting, from 3:30 p.m. to 4:15 p.m. on Friday, October 21st, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 20th, and from 9 a.m. to 3:30 p.m. and from 4:15 p.m. to 5 p.m. on October 21st, will be closed.

Arts Education (Learning in the Arts for Children & Youth Panel #6): October 24–25, 2005 in Room 716. A portion of this meeting, from 5:30 p.m. to 6 p.m. on Tuesday, October 25th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on October 24th, and from 9 a.m. to 5:30 p.m. and from 6 p.m. to 6:30 p.m. on October 25th, will be closed.

Arts Education (Learning in the Arts for Children & Youth Panel #7): October 26–28, 2005 in Room 716. A portion of this meeting, from 3:30 p.m. to 4:15 p.m. on Friday, October 28th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:45 p.m. on October 26th and October 27th, and from 9 a.m. to 3:30 p.m. and from 4:15 p.m. to 4:45 p.m. on October 28th, will be closed.

Media Arts (Access to Artistic Excellence): November 7–9, 2005 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on November 7th and November 8th, and from 9 a.m. to 3 p.m. on November 9th, will be closed.

Visual Arts (Access to Artistic Excellence): November 8–10, 2005 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on November 8th and November 9th, and from 9 a.m. to 4 p.m. on November 10th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 8, 2005, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: September 14, 2005.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 05–18856 Filed 9–20–05; 8:45 am]

BILLING CODE 7537–01–U

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendment to Renewed Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. DPR–38, DPR–47, and DPR–55, issued to Duke Energy Corporation (the licensee) for operation of Oconee Nuclear Station, Units 1, 2, and 3, located in Seneca, South Carolina.

The proposed amendment would revise the Technical Specifications (TSs) to relocate the pressure temperature limit curves of TS 3.4.3 to the Selected Licensee Commitments Manual and add TS Section 5.6.9 to reflect the requirements of Generic Letter 96–03 for this relocation.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

The proposed changes to reference only the Topical Report Number and title do not alter the use of the analytical methods used to

determine the PTL [pressure temperature limit] that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the PTLR without having to submit an amendment to the operating license. Implementation of revisions to Topical Reports will require review in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, or components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed changes do not increase individual or cumulative occupational/public radiation exposures. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated:

The proposed changes to reference only the Topical Report Number and title do not alter the use of the analytical methods used to determine the PTL that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the PTLR without having to submit an amendment to the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval.

The proposed changes do not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements or eliminate any existing requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

(3) Involve a significant reduction in the margin of Safety

The proposed changes to reference only the Topical Report Number and title do not alter the use of the analytical methods used to determine the PTL that have been reviewed and approved by the NRC. This method of referencing Topical Reports would allow the use of current Topical Reports to support limits in the PTLR without having to submit an amendment to the operating license. Implementation of revisions to Topical Reports would still be reviewed in accordance with 10 CFR 50.59 and where required receive NRC review and approval. The proposed changes do not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The setpoints at which protective actions are initiated are not altered by the proposed changes. Sufficient equipment remains available to actuate upon demand for the purpose of mitigating an analyzed event. As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific

contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 S. Church Street, Mail Code–PB05E, Charlotte, NC 28201–1006, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated September 15, 2005, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 16th day of September 2005.

For The Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18917 Filed 9–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

Firstenergy Nuclear Operating Company; Davis-Besse Nuclear Power Station, Unit 1; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of FirstEnergy Nuclear Operating Company (the licensee) to withdraw its May 3, 2004, application for proposed amendment to Facility Operating License No. NPF–3; for the Davis-Besse Nuclear Power Station (DBNPS), Unit 1, located in Ottawa County, Ohio.

The proposed amendment would have changed the facility as described in the DBNPS Updated Safety Analysis Report to modify the design requirements for the emergency diesel generators (EDGs). Specifically, the proposed amendment would have allowed a departure from the regulatory position of Safety Guide 9, ''Selection of Diesel Generator Set Capacity for Standby Power Supplies,'' for the frequency and voltage transient during the EDG automatic loading sequence.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 25, 2004 (69 FR 29767). However, by letter dated August 29, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 3, 2004 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML041260319), as supplemented by letter dated April 28, 2005 (ADAMS Accession No. ML051220367), and the licensee's letter dated August 29, 2005 (ADAMS Accession No. ML052440346), which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of September 2005.

For the Nuclear Regulatory Commission.

William A. Macon, Jr.,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18798 Filed 9–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA–05–042]

John Myers, Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

John Myers (Mr. Myers) is owner, President and sole employee of Universal Calibrations, located in Westbrook, Maine. Universal Calibrations does not possess a license issued by the Nuclear Regulatory Commission pursuant to 10 CFR part 30 or any Agreement State. Mr. Myers is certified by Campbell-Pacific Nuclear International, Inc. (CPN) a manufacturer of nuclear gauging devices, and an Agreement State Licensee located in California, to sell and repair their portable gauges and to train users in gauge operations. Mr. Myers performed such services for Engineering Consulting Service, (ECS, now ECS Mid-Atlantic, LLC), an NRC licensee, based on his CPN certifications. These services were provided to the licensee at its Richmond and Chantilly, Virginia facilities.

II

On April 9, 2004, the NRC Office of Investigations (OI) initiated an investigation to determine if Mr. Myers (1) deliberately provided materially inaccurate information to staff at the ECS, Richmond, facility in order to purchase a portable nuclear gauge containing NRC licensed material with the knowledge that he was not authorized to possess licensed material, and (2) took possession of several other portable nuclear gauges from the ECS, Chantilly Facility without a NRC or Agreement State license. OI Report No. 1–2004–019 was issued on March 16, 2005, and the information developed during that investigation concluded that Mr. Myers was not licensed by the NRC or an Agreement State, to acquire or possess licensed material in moisture/density gauging devices. Based on the evidence developed during the investigation, the NRC concluded that Mr. Myers (1) took possession of a portable nuclear gauge on September 15, 2003, from the ECS, Richmond, facility after deliberately providing materially inaccurate information to facility staff, with the knowledge that he was not authorized to possess licensed material and (2) took possession of several portable nuclear gauges on April 29, 2004, and other undetermined dates prior to this date, from the ECS, Chantilly Facility and transported them to the State of Maine. Mr. Myers was not licensed by the NRC as required under 10 CFR part 30 or an Agreement State, to acquire or possess any of the gauges.

During a previous investigation (OI Case No. 1–2004–018), issued on November 30, 2004, the NRC also determined that in November 2003, Mr. Myers took possession of a portable nuclear gauge from Triad Engineering, Inc. without a license to do so. On February 24, 2005, a Notice of Violation was issued to Triad Engineering, Inc. for transferring licensed material to Mr. Myers without verifying that he was authorized to receive the material.

In all of the cases, Mr. Myers transported the portable nuclear gauges (containing NRC licensed radioactive material) that he acquired from the ECS facilities and Triad Engineering, to his facility (UC) in the State of Maine, knowing that he was not authorized to do so.

III

Based on the above, the NRC has concluded that Mr. Myers, owner, President and sole employee of Universal Calibrations, deliberately violated 10 CFR 30.3 when he took possession of several portable gauging devices containing licensed radioactive material without a NRC or Agreement State license to possess byproduct material. 10 CFR 30.3 requires that no person shall manufacture, produce, transfer, receive, acquire, own, possess, or use byproduct material except as authorized in a specific or general license. This requirement is intended to assure that such persons have the requisite facilities, training and experience to protect public health and safety from any radiation hazard associated with the use of byproduct material. The NRC must be able to rely on its licensees, and employees of licensees, to comply with NRC requirements, including the requirement that licensed material cannot be acquired, possessed or transferred without a specific or general license. The deliberate violation of 10 CFR 30.3 by Mr. Myers, as discussed above, has raised serious doubt as to whether he can be relied upon to comply with NRC requirements in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Myers were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Myers be prohibited from any involvement in NRC-licensed activities for a period of five (5) years from the date of this Order. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Myers' conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, it is hereby ordered, effective immediately, that:

1. Mr. John Myers is prohibited from engaging in NRC-licensed activities for a period of five (5) years from the date of this Order. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Mr. John Myers is currently involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer or other entity, and provide a copy of this Order to the employer or other entity.

3. Subsequent to expiration of the five year prohibition, Mr. John Myers shall, for the next five years and within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or entity where he is, or will be, involved in the NRC-licensed activities. In the notification, John Myers shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of

the above conditions upon demonstration by Mr. Myers of good cause.

V

In accordance with 10 CFR 2.202, John Myers must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Myers or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, and to Mr. Myers if the answer or hearing request is by a person other than Mr. Myers. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov* and also to the Office of the General Counsel either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. If a person other than Mr. Myers requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by Mr. Myers or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(I), Mr. Myers, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

For the Nuclear Regulatory Commission.

Dated this 9th day of September 2005.

Martin J. Virgilio,

Deputy Executive Director for Materials, Research, State and Compliance Programs, Office of the Executive Director for Operations.

[FR Doc. 05–18797 Filed 9–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on October 5, 2005, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 5, 2005—12:30 p.m. until 5 p.m.

The purpose of this meeting is to discuss the License Renewal Application and associated Safety Evaluation Report (SER) with Open Items related to the License Renewal of the Browns Ferry Nuclear Plant, Units 1, 2, and 3. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, the Tennessee Valley Authority, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Cayetano Santos (telephone 301/415–7270) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 14, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. 05–18799 Filed 9–20–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on October 5, 2005, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 5, 2005, 10 a.m.–11:30 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated

Federal Official, Mr. Sam Duraiswamy (telephone: 301–415–7364) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: September 14, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. 05–18800 Filed 9–20–05; 8:45 am]

BILLING CODE 7590–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Occupational Safety and Health Review Commission (OSHRC).

ACTION: Notice of Senior Executive Service Performance Review Board Membership.

Title 5, U.S. Code, section 4314(c)(4), The Civil Service Reform Act of 1978, Public Law 95–454 (section 405) requires that the appointment of Performance Review Board (PRB) members be published in the **Federal Register**.

As required by 5 CFR 430.310, Chairman W. Scott Railton has appointed the following executives to serve on the Senior Executive Service Performance Review Board for the Occupational Safety and Health Review Commission beginning September 2005 through September 2007:

Stephen S. Smith, Associated Director for Management, Broadcasting Board of Governors,

Christopher W. Warner, General Counsel, U.S. Chemical Safety and Hazard Investigator Board,

Richard L. Baker, Executive Director, Federal Mine Safety and Health Review Commission,

Marcel C. Acosta, Deputy Executive Director, National Capital Planning Commission,

Jill Crumpacker, Chief of Staff/Director of Policy and Performance Management, U.S. Federal Labor Relations Authority,

Thomas Stock, General Counsel, Federal Mine Safety and Health Review Commission.

The PRB will make recommendations to the Chairman on the performance of the Commission's senior executives.

For information regarding this notice, please contact Alexander Fernández, General Counsel, Occupational Safety and Health Review Commission at (202) 606–5100.

Dated: September 9, 2005.

W. Scott Railton,

Chairman, Occupational Safety and Health Review Commission.

[FR Doc. 05–18773 Filed 9–20–05; 8:45 am]

BILLING CODE 7600–01–M

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 12:30 p.m., Monday, September 26, 2005; and 8:30 a.m., Tuesday, September 27, 2005.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: September 26—12:30 p.m. (Closed); September 27—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, September 26 at 12:30 p.m. (Closed).

1. Strategic Planning.
2. Personnel Matters and Compensation Issues.
3. Rate Case Planning.
4. Proposed Filing with the Postal Rate Commission for Parcel Return Service.
5. Office of Inspector General Fiscal Year 2006 Budget.
6. Fiscal Year 2006 Integrated Financial Plan Briefing.
7. Capital Investment.

a. Kansas City, Missouri, Main Post Office Modification Request.

Tuesday, September 27, at 8:30 a.m. (Open).

1. Minutes of the Previous Meeting, August 1–2, 2005.
2. Remarks of the Postmaster General and CEO Jack Potter.
3. Committee Reports.
4. Board of Governors Calendar Year 2006 Meeting Schedule.
5. Office of the Governors Fiscal Year 2006 Budget.
6. Postal Rate Commission Fiscal Year 2006 Budget.
7. Fiscal Year 2006 Operating and Capital Plans.
8. Strategic Transformation Plan 2006–2010.
9. Fiscal Year 2006 Annual Performance Plan—Government Performance and Results Act.
10. Capital Investment.

a. San Juan, Puerto Rico, Processing and Distribution Center.

11. Tentative Agenda for the November 1, 2005, meeting in Washington, DC.

FOR MORE INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 05–18900 Filed 9–16–05; 4:31 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–10; SEC File No. 270–154; OMB Control No. 3235–0122.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below. The Code of Federal Regulations citation to this collection of information is the following rule: 17 CFR 240.17a–10.

Rule 17a–10 requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 500 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 6,000 hours. Each broker-dealer will spend approximately $880 per response [1] for a

[1] According to the Securities Industry Association's guide on management and professional earnings, the median salary for a financial reporting manager is $97,500. Assuming that a financial reporting manager works 1800 hours per year, he or she earns $54.17 per hour. Adding in overhead costs of 35%, the hourly rate equals $73.13 per hour, or $877.56 per 12-hour response.

total annual expense for all broker-dealers of $440,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director, Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 13, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18764 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28029]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 14, 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 October 6, 2005, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, 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 October 6, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Black Hills Corporation, et al. (70–10237)

Black Hills Corporation (''Black Hills''), a registered public-utility holding company, Black Hills Power, Inc. (''Black Hills Power''), an electric-utility subsidiary of Black Hills, both located at 625 Ninth Street, Rapid City, SD 57701, and Cheyenne Light, Fuel and Power Company, also an electric-utility subsidiary of Black Hills, located at 108 West 18th, Cheyenne, WY 82001, Black Hills Energy, Inc. (''Black Hills Energy''), a nonutility subsidiary of Black Hills, and all of Black Hills other subsidiaries (collectively, ''Subsidiaries''), located at 625 Ninth Street, Rapid City, SD 57701 (collectively, ''Applicants''), have filed with the Commission a post-effective amendment to their previously filed application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 11, 12(b) and (c), 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 52, 53, 54, 58 and 88 through 92.

Black Hills requests certain extensions of time.

I. Background

Black Hills is an integrated public-utility holding company.[1] On December 28, 2004, the Commission authorized Black Hills and its Subsidiaries to engage in various financing and other transactions (''Financing Order'').[2] In connection with the Financing Order, Black Hills committed to establish a limited liability subsidiary, Black Hills Service Company, LLC (''Black Hills Service''), to provide centralized services (such as accounting, financial, human resources, information technology and legal services) to the companies in the Black Hills system[3] and to submit certain filings to the Commission and to implement certain processes and methodologies by December 28, 2005.[4]

The Act was repealed on August 8, 2005, and the Public Utility Holding Company Act of 2005 (''PUHCA 2005'') was enacted on that date by the Energy Policy Act of 2005 (''Energy Policy Act 2005''). The repeal of the Act ends the Commission's authority over Black Hills and the Black Hills system under this statute as of February 8, 2006 and subjects Black Hills and the Black Hills system to new, but in certain respects similar, regulation by the Federal Energy Regulatory Commission (''FERC'') under PUHCA 2005.

FERC is required to issue certain PUHCA 2005 regulations by December 8, 2005. Black Hills states that the new FERC regulations may affect some of the processes and methodologies relating to allocation of costs, among other things, that were addressed in the Financing Order.

[1] Black Hills is engaged in two lines of business: (1) The generation, transmission, distribution and sale of electricity to retail and wholesale customers; and (2) through Black Hills Energy and its subsidiaries, the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act, qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978, as amended, and the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities. Applicants previously engaged in certain exempt telecommunications activities and these businesses have recently been sold.

[2] *Black Hills Corporation, et al.*, Holding Company Act Release No. 27931. Black Hills registered as a public-utility holding company under the Act earlier this year, in 2005. By the Financing Order, Black Hills, then a public-utility holding company exempt from registration under section 3(a)(1) of the Act by rule 2, Black Hills Power, its subsidiary electric-utility company, and all other direct and indirect subsidiaries, were authorized to engage in financing and investment activities, intrasystem services and other related activities and transactions, through December 31, 2007, following Black Hills' registration as a public-utility holding company. A recent, related notice was issued on July 26, 2005, addressing certain administrative money pool matters. *See Black Hills Corporation, et al.*, Holding Co. Act Release No. 28003. No hearing has been requested.

[3] Black Hills states that it explained, in its application for the Financing Order, that the Black Hills system companies will engage in a variety of affiliate transactions for goods, services and construction, in accordance with rules 87, 88, 90 and 91, unless otherwise authorized by Commission order or rule. Black Hills states it also committed to file accounting and cost allocation procedures with the Commission by October 1, 2005; to form Black Hills Service within sixty days of issuance of the Financing Order, but sought authority to delay (for not longer than twelve months) the full implementation of Black Hills Service and the required accounting systems and cost allocation methodologies; and finally, to complete conversion of non-exempt market-based rate affiliate transactions to cost-based transactions (not later than twelve months following issuance of the Financing Order). In the Financing Order, the Commission acknowledged Black Hills' plans for these procedures, Black Hills Service and the affiliate arrangements.

[4] Black Hills states that it established Black Hills Service and has taken significant steps to implement it. Black Hills states further that, in this implementation, it has already expended significant resources in extensive planning and organizational initiatives to identify employees and functions to be transferred to Black Hills Service, defining extensive new organizational, management and personnel structures to be put in place at Black Hills Service and associate companies and formulating required changes to human resources systems and pension and benefit plans.

II. Requested Authority

Black Hills, therefore, requests the Commission to permit it:

1. To extend Black Hills' time for certain filings with the Commission, from October 1, 2005, through February 8, 2006, the effective date of the Act's repeal (describing accounting systems and cost allocation methodologies);

2. To extend the time for Black Hills' full implementation of Black Hills Service, from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal (accounting systems and cost allocation methodologies); and

3. To extend the time for Black Hills' conversions of non-exempt market-based rate affiliate transactions to cost-based transactions from December 28, 2005, through February 8, 2006, the effective date of the Act's repeal.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18817 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 52444/September 15, 2005 and 27067/September 15, 2005]

Securities Exchange Act of 1934 and Investment Company Act of 1940; Order Under Section 17a and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder; Order Under Section 6(c) and Section 38(a) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Company Act and Certain Rules Thereunder

Section 36 of the Securities Exchange Act of 1934 (the ''Exchange Act'') authorizes the Securities and Exchange Commission (the ''Commission''), by rule, regulation, or order, to exempt, either conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of person or securities from any provision of that section or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[1]

Section 6(c) of the Investment Company Act of 1940 (the ''Company Act'') provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Company Act. Section 38(a) of the Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Act.

Hurricane Katrina made landfall along the Gulf Coast on August 29, 2005, causing catastrophic damage to portions of Alabama, Louisiana and Mississippi. The storm and subsequent flooding displaced individuals and businesses and disrupted communications across the Gulf Coast region. We are issuing this Order to address the needs of companies and individuals located within the areas affected by Hurricane Katrina that must comply with the requirements of the federal securities laws.

I. Filing Requirements for Registrants and Other Persons

The lack of communications, facilities and available staff and professional advisors as a result of Hurricane Katrina could hamper the efforts of public companies and other persons in the affected areas in their compliance with filing deadlines. At the same time, investors have an interest in the timely availability of required information about these companies and the activities of persons required to file schedules and reports with respect to these companies. While the Commission believes that the relief from filing requirements provided by this Order is both necessary in the public interest and consistent with the protection of investors, we remind public companies and other persons who are the subjects of this Order to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant (as defined in Exchange Act Rule 12b–2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act Sections 13(a), 13(d), 13(g), 14(a), 14(c), 15(d) and 16(a), Regulations 13A, 13D, 13G, 14A, 14C and 15D, and Rule 16a–3, as applicable, for the period from and including August 29, 2005 to October 14, 2005, where the conditions below are satisfied.

Conditions

(a) With respect to registrants, the address of the registrant's principal executive offices listed on the cover page of the most recent periodic report filed by the registrant on Form 10–Q, 10–QSB, 10–K, or 10–KSB is within one of the counties or parishes designated as of this date to be within the Presidentially Declared Disaster Areas where Individual Assistance has been authorized by the Federal Emergency Management Agency as a result of Hurricane Katrina (the ''Presidential Disaster Areas''), which include the Louisiana parishes of: Acadia, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Iberia, Iberville, Jefferson, Jefferson Davis, Lafayette, Lafourche, Livingston, Orleans, Pointe Coupee, Plaquemines, St. Bernard, St. Charles, St. Helena, St. James, St. John, St. Mary, St. Martin, St. Tammany, Tangipahoa, Terrebonne, Vermilion, Washington, West Baton Rouge, and West Feliciana; the Mississippi counties of: Adams, Amite, Attala, Claiborne, Choctaw, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Jackson, Jasper,

[1] Section 3(a)(34) defines ''appropriate regulatory authority'' when used in the context of transfer agents as generally (1) the Comptroller of the Currency, in the case of a national bank or a bank or a subsidiary of such bank; (2) the Board of Governors of the Federal Reserve System or subsidiary thereof, a bank holding company or a subsidiary of a bank holding company; (3) the Federal Deposit Insurance Corporation; and (4) the Commission in the case of all other transfer agents. Section 17A(c)(1) also requires that the Commission not object to the use of exemptive authority in instances where an appropriate regulatory authority other than the Commission is providing exemptive relief.

Jefferson, Jefferson Davis, Jones, Kemper, Lamar, Lauderdale, Lawrence, Leake, Lincoln, Lowndes, Madison, Marion, Neshoba, Newton, Noxubee, Oktibbeha, Pearl River, Perry, Pike, Rankin, Scott, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson, Winston, and Yazoo; and the Alabama counties of Baldwin, Clarke, Choctaw, Mobile, Pickens, Greene, Hale, Sumter, Tuscaloosa, and Washington.

(b) With respect to persons other than registrants, the address listed on the most recently filed schedule or form that the person had filed, or the address that the person would be required to list on any covered schedule or form required to be filed during the time period covered by this Order, is within one of the Presidential Disaster Areas; and

(c) The registrant or person files with the Commission any report, schedule or form required to be filed during the period from and including August 29, 2005 to October 14, 2005 on or before October 17, 2005.

II. Furnishing of Proxy and Information Statements

The conditions in the areas affected by Hurricane Katrina, including displacement of hundreds of thousands of individuals and the destruction of property, have prevented and will continue to prevent the delivery of mail to the region. In light of these conditions, we believe that relief is warranted for those seeking to comply with our rules imposing requirements to furnish materials to security holders when mail delivery is not possible.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act, that a registrant or any other person is exempt from the requirements to furnish proxy statements, annual reports and other soliciting materials, as applicable (the ''Soliciting Materials''), under Exchange Act Rules 14a–3 and 14a–12, and the requirements to furnish information statements and annual reports, as applicable (the ''Information Materials''), under Exchange Act Rules 14c–2 and 14c–3, where the conditions below are satisfied.

Conditions

(a) The registrant's security holder has a mailing address located within a zip code where, as a result of Hurricane Katrina, the United States Postal Service has suspended mail service of the type or class customarily used by the registrant;

(b) The registrant or other person making a solicitation has followed normal procedure when furnishing the Soliciting Materials to the security holder in order to ensure that the Soliciting Materials preceded or accompanied the proxy, as required by the rules applicable to the particular form of Soliciting Materials, or, in the case of Information Materials, the registrant has followed normal procedure when furnishing the Information Materials to the security holder in accordance with the rules applicable to Information Materials; and

(c) If requested by the security holder, the registrant or other person provides the Soliciting Materials or Information Materials by a means reasonably designed to furnish the Soliciting Materials or Information Materials to the security holder.

* * * * *

Any registrant or other person unable to meet a deadline (including any shareholder who is unable to meet a deadline applicable to a shareholder proposal) or a delivery obligation as a result of Hurricane Katrina, or in need of other assistance related to their public filings, should contact the Division of Corporation Finance at (202) 551–3500 or at *cfhotline@sec.gov*. The Division will consider any requests on a case-by-case basis.

III. Relief Relating Specifically to Registered Investment Companies Regarding Transmittal of Annual and Semi-Annual Reports to Shareholders Required by the Company Act and the Rules Thereunder

For reasons similar to those cited in Section II, we believe that relief is warranted for the transmittal by registered investment companies of annual and semi-annual reports to shareholders.

Accordingly, *it is ordered*, pursuant to Sections 6(c) and 38(a) of the Company Act that, for 90 calendar days beginning on August 29, 2005, a registered management investment company is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e–1 thereunder to transmit annual and semi-annual reports to shareholders;

And, for 90 calendar days beginning on August 29, 2005, a registered unit investment trust is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e–2 thereunder to transmit annual and semi-annual reports to shareholders,

Provided that:

(a) The shareholder or unitholder's mailing address for transmittal as listed in the records of the registered investment company has a zip code for which the United States Postal Service has suspended mail service, as a result of Hurricane Katrina, of the type or class customarily used by the investment company for transmittal of reports; and

(b) The registered investment company or other person promptly transmits the reports (i) if requested by the shareholder or unitholder, or (ii) at the earlier of the end of the 90-day period or the resumption of the applicable mail service.

* * * * *

Registered investment companies experiencing difficulties in complying with their obligations after the 90-calendar-day period, or in need of additional information or assistance regarding issues arising under the Company Act, should contact the Division of Investment Management, Office of Chief Counsel, at (202) 551–6825 or *imocc@sec.gov* or use the contact information provided at the end of Section II of the Order.

IV. Transfer Agent Compliance With Sections 17A and 17(f) of the Exchange Act

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership. Following the events of Hurricane Katrina, registered transfer agents located in the affected region may have difficulty complying with some or all of their obligations as registered transfer agents. In addition, transfer agents located outside the affected region in many cases may be unable to conduct business with entities or securityholders inside the region, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of this emergency, the Commission recognizes that securities transfers and payments to and from securityholders in the affected region may present compliance issues for many transfer agents. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to relax temporarily certain regulatory provisions in order to provide transfer agents with flexibility in coping with the situation.[2] The

[2] This order temporarily exempts transfer agents from the requirements of (1) Section 17A of the Exchange Act and Rules 17Ad–1 through 17Ad–21T

Continued

Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Accordingly, *it is ordered*, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent located in the Presidential Disaster Areas that is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable, is hereby temporarily exempted from complying with such provisions for the period from and including August 29, 2005 to October 17, 2005, where the conditions below are satisfied.

Conditions

(a) *Books and Records Maintained at Affected Locations.* A registered transfer agent that maintained books and records at locations inside the Presidential Disaster Areas must notify the Commission in writing by October 17, 2005, if such transfer agent knows or believes that the books and records it is required to maintain pursuant to Section 17A and the rules thereunder were lost, destroyed, or materially damaged. To the extent feasible, the transfer agent should include as much information as possible as to the type of books and records that were maintained, the names of the issuers for whom such books and records were maintained, and the extent of the loss of, or damage to, such books and records.

(b) *Securityholder Funds and Securities.* A transfer agent registered with the Commission and holding securityholder or issuer funds or securities must notify the Commission in writing by October 17, 2005, if such transfer agent knows or believes that funds or securities belonging to either issuers or securityholders were lost, destroyed, stolen, or unaccountable for any reason. To the extent possible, the transfer agent should include information regarding the dollar amount of any such funds and the number of such securities.

Transfer agents that have custody or possession of any securityholder or issuer funds or securities shall use all reasonable means available to ensure that all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction and that all funds are protected against misuse. To the extent possible, all securityholder or issuer funds that remain in the custody of the transfer agent shall be maintained in a separate bank account held for the exclusive benefit of securityholders until such funds are properly remitted.

The notifications required under (a) and (b) above shall be sent to: Securities and Exchange Commission, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

It is further ordered, pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is residing outside the Presidential Disaster Areas and is unable to comply with any provision of Section 17A or any provision of any rule thereunder due to an inability to conduct business with persons (entities or individuals) inside the Presidential Disaster Areas or an inability to remit funds or securities to securityholders residing in the Presidential Disaster Areas is hereby temporarily exempted from compliance with such provisions with respect to those specific transactions for the period from and including August 29, 2005, to October 17, 2005, on the condition that such transfer agent must make and keep a record of the extent of and the reason for noncompliance and retain those records for a period of no less than three years. As a further condition to this exemption, to the extent the transfer agent has not already done so, registered transfer agents shall maintain in a separate bank account held for the exclusive benefit of securityholders all securityholder funds to be remitted to securityholders until such funds are properly remitted to the securityholders.

* * * * *

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected securityholders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should consider placing a notice on their websites or providing toll free numbers to respond to inquiries.

Transfer agents experiencing difficulties in complying with obligations after October 17, 2005, or in need of additional information, should contact the Division of Market Regulation, Office of Interpretation and Guidance, at (202) 551–5760 or *marketreg@sec.gov* or use the contact information provided at the end of Section II of the Order.

V. Independence—Bookkeeping or Other Services Related to the Accounting Records or Financial Statements of the Audit Client

The conditions in the areas affected by Hurricane Katrina, including displacement of hundreds of thousands of individuals, the destruction of property and loss or destruction of corporate records, may require massive and extraordinary efforts to reconstruct lost or destroyed accounting records. The Commission understands that in this unique situation an audit client may look to its auditor for assistance in reconstruction of its accounting records because of the auditor's knowledge of the client's financial systems and records. Under Section 10A(g)(1) of the Exchange Act and Rule 2–01(c)(4)(i) of Regulation S–X, auditors are prohibited from providing bookkeeping or other services relating to the accounting records of the audit client, and in Rule 2–01(c)(4)(i) of Regulation S–X, these prohibited services are described as including ''maintaining or preparing the audit client's accounting records'' or ''preparing or originating source data underlying the audit client's financial statements.'' In light of the conditions in areas affected by Hurricane Katrina, however, we believe that limited relief from these prohibitions is warranted for those registrants and other persons that are required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder and that are affected by those conditions.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act, that independent certified public accountants engaged to provide audit services to registrants and other persons required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder are exempt from the requirements of Section 10A(g)(1) of the Exchange Act and Rule 2–01(c)(4)(i) of Regulation S–X, where the conditions below are satisfied.

Conditions

(a) With respect to audit clients that are registrants, the address of the registrant's principal executive offices listed on the cover page of the most recent periodic report filed by the registrant on Form 10–Q, 10–QSB, 10–K, or 10–KSB is within one of the Presidential Disaster Areas;

(b) With respect to audit clients other than registrants, the address listed on the most recently filed schedule or form

thereunder and (2) Section 17(f) of the Exchange Act and Rules 17f–1 and 17f–2 thereunder.

that the audit client had filed, or the address that the audit client would be required to list on any covered schedule or form required to be filed, is within one of the Presidential Disaster Areas;

(c) Services provided by the auditor are limited to reconstruction of previously existing accounting records that were lost or destroyed as a result of Hurricane Katrina and such services cease as soon as the client's lost or destroyed records are reconstructed, its financial systems are fully operational and the client can effect an orderly and efficient transition to management or other service provider; and

(d) With respect to issuers, the services provided by the issuer's auditor pursuant to this Order are subject to pre-approval by the issuer's audit committee as required by Rule 2–01(c)(7) of Regulation S–X.

* * * * *

Auditors or audit clients with questions about this section of the Order or with other questions relating to auditor independence are encouraged to call the Office of the Chief Accountant directly at (202) 551–5300 or use the contact information provided at the end of Section II of the Order.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18761 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52446; File Nos. SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05]

Self-Regulatory Organizations; The Depository Trust Company, Fixed Income Clearing Corporation, and National Securities Clearing Corporation; Order Approving Proposed Rule Change To Establish a Fine for Members Failing To Conduct Connectivity Testing

September 15, 2005.

I. Introduction

On May 13, 2005, May 3, 2005, and on May 4, 2005, respectively, The Depository Trust Company (''DTC''), the Fixed Income Clearing Corporation (''FICC''), and the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule changes SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On June 7, 2005, NSCC amended its proposed rule change. Notice of the proposals, as amended, was published in the **Federal Register** on July 21, 2005.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule changes.

II. Description

DTC, FICC, and NSCC are imposing a fine on any member that is required to conduct connectivity testing for business continuity purposes and fails to do so.

In the aftermath of September 11, 2001, and in conjunction with a financial industry white paper, DTC, FICC, and NSCC require connectivity testing each year for critical (''Top Tier'') members.[3] The criteria used by DTC, FICC, and NSCC to identify their respective Top Tier members were revenues, clearing fund contributions, settlement amounts, and trading volumes. Connectivity testing for the Top Tier members was initiated on January 1, 2004. Due to the critical importance of being able to assess whether a Top Tier member has sufficient operational capabilities, DTC, FICC, and NSCC have determined that they need the ability to fine any Top Tier member that does not test.[4]

Currently, each member of DTC, FICC, and NSCC that is designated as Top Tier is advised of this status and is provided with information on the testing requirements. Under DTC, FICC, and NSCC's current procedures, if testing is not completed by a Top Tier member by the end of June, a reminder notice is sent to the member. Thereafter, another reminder notice is sent in October and, if necessary, again in December.

The reminder notice sent in December will advise that if testing is not completed by December 31, a fine of $10,000 will be imposed. These fines will be collected from members in January of the following year. The Membership and Risk Management Committee will be notified of all members that were fined for failing to complete connectivity testing.

In the event that any member fails to complete connectivity testing for two successive years, the fine that will be imposed at that time will be $20,000. Failure to complete testing for more than two successive years will result in disciplinary action, including potential termination of membership.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[5] The Commission finds that DTC, FICC, and NSCC's proposed rule changes are consistent with this requirement because the implementation of the fines should help DTC, FICC, and NSCC to enforce compliance with their connectivity testing rules for business continuity purposes and as a result should better enable them to ensure the safeguarding of securities and funds which are in their custody or control.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–DTC–2005–04, SR–FICC–2005–10, and SR–NSCC–2005–05) be and hereby are approved.

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 52403 (July 15, 2005), 70 FR 42122.

[3] The Federal Reserve, Office of the Comptroller of the Currency, and the Commission issued ''Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.'' [68 FR 17809 (April 11, 2003)]. This document provided guidelines that required core clearing and settlement organizations, such as DTC, FICC, and NSCC, and others in the financial industry to manage business continuity capabilities. DTC, FICC, and NSCC developed their testing of Top Tier firms based on the guidelines outlined in the white paper.

[4] Pursuant to DTC Rule 2, ''Participants and Pledgees,'' participants must furnish, upon DTC's request, information sufficient to demonstrate operational capability. In addition, DTC Rule 21, ''Disciplinary Sanctions,'' allows DTC to impose fines on participants for any error, delay or other conduct detrimental to the operations of DTC.

Pursuant to GSD Rule 3, ''Responsibility, Operational Capability, and Other Membership Standards of Comparison-Only Members and Netting Members,'' the GSD may require members to fulfill operational testing requirements as the GSD may at any time deem necessary. Pursuant to MBSD Rule 1, Section 3 of Article III, all MBSD applicants and members agree to fulfill operational testing requirements and related reporting requirements that may be imposed to ensure the continuing operational capability of the applicant.

Pursuant to NSCC Rule 15, ''Financial Responsibility and Operational Capability,'' members must furnish to NSCC adequate assurances of their financial responsibility and operational capability as NSCC may at any time deem necessary. In addition, NSCC Rule 48, ''Disciplinary Procedures,'' allows NSCC to impose a fine on participants for any error, delay, or other conduct that is determined to be detrimental to the operations of NSCC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18763 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52431; File No. SR–NASD–2005–103]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Changes to NASD Rule 3110 and IM–3110

September 14, 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 6, 2005, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)[4] thereunder, which renders the proposed rule change effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 3110 to re-label paragraph (d) (Changes in Account Name or Designation) as paragraph (j), and relocate the Interpretive Material 3110 (''IM–3110'') to the end of NASD Rule 3110. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

3110. Books and Records

(a) through (c) No change.

[(d) Changes in Account Name or Designation]

[Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4.]

[For purposes of this paragraph (d), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.]

[* * *]

[IM–3110. Customer Account Information]

[(a) Members should be aware that, effective January 1, 1990, any transaction which involves a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.]

[(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).]

[(c) Accounts opened, and recommendations made prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) as previously in effect as set forth in Notice to Members 90–52 (August 1990).]

[* * *]

(d) through (i) No change.

(j) Changes in Account Name or Designation

Before any customer order is executed, there must be placed upon the memorandum for each transaction, the name or designation of the account (or accounts) for which such order is to be executed. No change in such account name(s) (including related accounts) or designation(s) (including error accounts) shall be made unless the change has been authorized by a member or a person(s) designated under the provisions of NASD rules. Such person must, prior to giving his or her approval of the account designation change, be personally informed of the essential facts relative thereto and indicate his or her approval of such change in writing on the order or other similar record of the member. The essential facts relied upon by the person approving the change must be documented in writing and preserved for a period of not less than three years, the first two years in an easily accessible place, as the term ''easily accessible place'' is used in SEC Rule 17a–4.

For purposes of this paragraph (j), a person(s) designated under the provisions of NASD rules to approve account name or designation changes must pass a qualifying principal examination appropriate to the business of the firm.

IM–3110. Customer Account Information

(a) Members should be aware that, effective January 1, 1990, any transaction which involves a non-Nasdaq, non-exchange equity security trading for less than five dollars per share may be subject to the provisions of SEC Rules 15g–1 through 15g–9, and those rules should be reviewed to determine if an executed customer suitability agreement is required.

(b) Additional information is required to be obtained prior to making recommendations to customers (see Rule 2310) and in connection with discretionary accounts (see Rule 2510).

(c) Accounts opened, and recommendations made prior to January 1, 1991 remain subject to former Article III, Sections 2 and 21(c) as previously in effect as set forth in Notice to Members 90–52 (August 1990).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b-4(f)(6).

[5] Nasdaq asked the Commission to waive the 30-day operative delay. See Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission previously approved amendments to NASD Rule 3110 (Books and Records) to create new paragraphs (d) and (i) concerning Changes in Account Name or Designation, and Holding of Customer Mail, respectively.[6]

In reviewing NASD Rule 3110, Nasdaq staff noticed that certain provisions in NASD Rule 3110 were inadvertently labeled as being part of the Interpretive Material, IM–3110 (Customer Account Information). In seeking to re-label these provisions as part of NASD Rule 3110, Nasdaq staff noticed that two paragraphs of NASD Rule 3110 are now labeled as paragraph (d). To avoid confusion, Nasdaq proposes to re-label paragraph (d) (Changes in Account Name or Designation) as paragraph (j). In addition, Nasdaq proposes to move the Interpretive Material, IM–3110, which consists only of paragraphs (a)–(c), and is currently contained in the middle of NASD Rule 3110, to the end of the rule. This change conforms IM–3110 to Nasdaq's general practice of placing Interpretive Material after the rule to which it relates.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that Nasdaq rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that this technical change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of NASD Rule 3110.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b-4(f)(6) thereunder.[9]

Nasdaq has requested that the Commission waive the 30-day pre-operative period, which would make the proposed rule operative immediately. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is solely technical in nature and is intended to alleviate confusion when reading the provisions of NASD Rule 3110. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–103 and should be submitted on or before October 12, 2005.

[6] *See* Securities Exchange Act Release No. 49883 (June 17, 2004), 69 FR 35092 (June 23, 2004) (SR–NASD–2002–162).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) under the Act requires the self-regulatory organization to provide the Commission written notice of its intent to file the proposed rule change at least five business days (or such shorter time as designated by the Commission) before doing so. Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement. The Commission granted Nasdaq's request.

[10] For purposes of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18767 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52445; File No. SR–NSCC–2005–08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Codify, Consolidate, and Clarify Financial Responsibility and Operational Capability Rules

September 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 2, 2005, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to codify, consolidate, and clarify NSCC's financial responsibility and operational capability rules into NSCC Rule 15 (''Financial Responsibility and Operational Capability'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Clarification of ''Participants''

Section 1 of Rule 15 sets forth NSCC's general authority to establish standards of membership and guidelines for the application of such standards. Section 1 is amended to make clear that it applies to a Member, Non-Clearing Member, Municipal Comparison Only Member, Fund Member, Insurance Carrier Member, TPA Member, or Data Services Only Member and that each such member is referred to as a ''participant'' in NSCC's rules.

2. Regular Reporting Required of Participants

Section 2 of Rule 15 is amended to clearly set forth the list of reports and information, such as financial statements and copies of certain regulatory filings, which certain participants are routinely required to submit on a regular basis for NSCC's risk management purposes. The explicit list of reports and information includes all such reports and information currently required by NSCC under its general authority to monitor compliance with membership standards. The submission requirements applicable to certain categories of NSCC participants previously had been set forth on NSCC's Web site and were communicated to participants quarterly by NSCC Important Notice. Codifying the requirements in Section 2 of Rule 15 will further facilitate compliance with these reporting requirements.

The codification of the list of reports and information which are required on a routine basis does not restrict NSCC's current general authority to require additional information in particular instances should NSCC's risk management procedures so require pursuant to new Section 2 of Rule 15.

The timeframes by which participants are required to submit particular information is deleted from Section 2 of Rule 15 because these timeframes may vary according to external parameters such as, for example, regulatory requirements applicable to a certain class of participants. Section 2 now makes reference to the submission of reports and information within the time periods prescribed by NSCC from time to time. Section 2 also directs participants to provide the information in the form and to the person or department specified by NSCC from time to time. NSCC communicates these submission deadlines and requirements to participants by Important Notices which are reissued quarterly. In addition, the current submission schedule is posted on NSCC's Web site, and new participants are advised of the submission schedule in the NSCC acceptance letter. The reference to the timeframe by which reports are due is also deleted from Addendum B (including the version of Addendum B contained in Appendix 1) since it is now set forth clearly in Section 2 of Rule 15.

Section 2 of Rule 15 is further revised to make specific reference to a participant's obligation to provide amendments and addenda to all reports and to inform NSCC of any extensions granted by its regulator regarding submission of a regulatory report for which NSCC also requires submission. To the extent NSCC's review includes copies of reports submitted by the participant to its regulator, this will facilitate NSCC's review process by making each participant responsible for notifying NSCC of an extension rather than requiring NSCC to make inquiries of the participant after NSCC fails to receive a report by the date on which it is otherwise required to be provided to NSCC.

In addition, Section 2 is amended to make specific reference to a participant's obligation to provide annual financial statements of its guarantor consistent with NSCC's current risk management review procedures. Currently, these procedures are communicated to participants on NSCC's Web site, in Important Notices, and in correspondence. Codification of the requirement in Rule 15 will facilitate compliance.

3. Participant Reporting on Certain Changes

Rule 15 is further amended by new Section 3 which codifies a participant's reporting obligations with respect to certain changes which could have a substantial impact on its business or financial condition, such as: (1) Material organizational changes including mergers, acquisitions, changes in corporate form, name changes, changes in the ownership of a participant or its affiliates, and material changes in management; (2) material changes in business lines, including new business lines undertaken; and (3) defendant status in litigation which could reasonably impact the participant's financial condition or ability to conduct business. Timely notification of such changes and events enables NSCC to analyze the implications of the event and determine an appropriate course of action for risk management purposes.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

These provisions are currently contained in Addendum T (''Interpretation of the Board of Directors, Continuing Responsibility of the Corporation''), which is being deleted. Including the Addendum T reporting obligations in Rule 15 will facilitate compliance by: (1) Consolidating the reporting requirements in one place; (2) clarifying the time by which notification is due; and (3) using language substantially similar to that used by the Government Securities Division and the Mortgage Backed Securities Divisions of the Fixed Income Clearing Corporation (''FICC''), an affiliated clearing agency to which some NSCC participants are also members.

New Section 3 also clarifies that notice given in connection with such changes is not subject to the provisions in Rule 45 (''Notices'') that govern other types of participant notices. Instead, these notices must be given in the manner and to the persons specified by NSCC for this purpose. Currently, NSCC instructs its participants to communicate such notices to NSCC's Risk Management staff because this area is responsible for evaluating the impact of the change in the member's continued compliance with NSCC's membership requirements. These notice requirements are set forth in NSCC's Important Notices and on NSCC's Web site. In addition, Section 3 includes the time by which such notification must be given, which is consistent with the analogous reporting requirements adopted by FICC.

4. Authority To Further Examine Participants

The provisions currently contained in Sections 2(a) and 2(c) of Rule 15 regarding NSCC's authority to further examine the financial condition and operational capability of a participant or applicant are consolidated in new Section 4.

These provisions are essentially unchanged except that NSCC's authority to receive reports and information regarding NSCC's participants from other self-regulatory organizations is expanded to include other regulatory bodies having authority to examine, register, or license the participant. This change accommodates NSCC's review of regulated entities, such as insurance companies and trust companies, whose regulators are not self-regulatory organizations.

5. Additional Assurances From Participants

The provisions regarding NSCC's authority to require additional assurances from its participants are currently set forth in Section 2(b), Sections 3(a) and 3(b), and Sections 4(a) and 4(b) of NSCC's Rules. Rule 15 is revised to consolidate these provisions in new Section 5(b). Specific references regarding NSCC's authority to restrict the activities of Mutual Fund/Insurance Services Members and/or to require them to enter into specific agreements regarding operational support are deleted because such authority is included in NSCC's general authority in Rule 15 to restrict activities of its participants or to impose specific conditions on their participation.

6. Technical Changes

A new Section 6 is added to Rule 15 containing text that is currently contained in Section 2 of Rule 15. Section 6 clarifies that all information submitted to NSCC by a participant under any section of Rule 15 is subject to confidentiality requirements imposed by law or regulatory authority.

A new Section 7 is added to Rule 15 cross-referencing NSCC's authority to take disciplinary action, impose fines, restrict access to services, or otherwise take action with respect to a participant's failure to comply with Rule 15. This will facilitate NSCC's enforcement of the requirements of Rule 15.

An identical technical change regarding the requirement that an applicant shall provide such other reports and information as NSCC determines appropriate is made to each of the following rule provisions: Rule 2 (''Members''), Section 2; Rule 31 (''Data Services Only Member''), Section 2; Rule 51 (''Fund Member''), Section 2; Rule 56 (''Insurance carrier Member''), Section 2; and Rule 60 (''TPA Member''), Section 2. The terminology is made consistent among these analogous provisions.

The proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to NSCC because it assures the safeguarding of securities and funds in NSCC's custody or control or for which it is responsible by clarifying rules for applicants and members. As a result, NSCC's ability to maintain a financially and operationally sound participant base should be enhanced.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act[4] and Rule 19b–4(f)(1)[5] thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2005–08 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–NSCC–2005–08. 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

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(i).

[5] 17 CFR 240.19b–4(f)(1).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2005–08 and should be submitted on or before October 12, 2005.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18765 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52435; File No. SR–NYSE–2005–62]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Add Exchange Rule 123G Prohibiting Trade Shredding

September 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 9, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add NYSE Rule 123G to prohibit members, member organizations and associated persons from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment to the member, member organization or associated person without regard for the best interests of the customer.

The text of the proposed rule change appears below. Additions are *in italics.*

* * * * *

Order Entry Practices

Rule 123G

No member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization may engage in conduct that has the intent or effect of unbundling orders for execution for the primary purpose of maximizing a monetary or in-kind amount received by the member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization as a result of the execution of such orders. For purposes of this section, ''monetary or in-kind amounts'' shall be defined to include commissions, gratuities, payments for or rebate of fees resulting from the entry of such orders, or any similar payments of value to the member, member organization, allied member, approved person or registered or non-registered employee of a member or member organization.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

''Trade shredding'' is the practice of unbundling customer orders for securities into multiple smaller orders for the primary purpose of maximizing payments to the member or member organization, and thereby possibly disadvantaging the customer by, for example, charging excessive fees or commissions, or failing to obtain best execution of an order. Such payments may create a conflict of interest between the customer and the member or member organization. For example, as a result of the manner in which market data revenues are calculated, market centers can derive a greater share of market data revenue by increasing the number of trades that they report to the consolidated tape. At the same time, some markets have adopted a practice of sharing these increased revenues with market participants, including non-members, who send in orders. Thus, the Commission has expressed concern that an incentive exists for market participants receiving rebates to engage in distortive behavior, such as trade shredding, as a means to increase their share of market data revenues. Other economic arrangements between members or member organizations and their customers may create similar incentives to engage in similarly distortive behavior.

The Commission has requested that all U.S. self-regulatory organizations implement rule changes to inhibit the practice of trade shredding. The NYSE does not rebate revenues from tape reporting to members or non-members. Thus, there is no incentive in this area for NYSE order providers to engage in trade shredding on orders sent to the Exchange. However, a member or member organization may engage in conduct that has an impact similar to trade shredding, in that it unbundles a customer's order for the primary purpose of maximizing payments to the member or member organization at the customer's expense and to the customer's detriment.

In response to the Commission's request, the Exchange proposes to adopt a new Rule 123G prohibiting all such practices. Specifically, new Rule 123G would prohibit a member, member organization or any associated person from unbundling orders for execution for the primary purpose of maximizing a monetary or like payment of a type described in the rule.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2005–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-NYSE–2005–62. 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 offices of NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE–2005–62 and should be submitted on or before October 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18766 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52436; File No. SR–PCX–2005–53]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc. To Create a New Order Type—Passive Liquidity Orders—for Use in the ArcaEx Trading Facility of the PCX

September 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2005, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On June 3, 2005, the PCX filed Amendment No. 1 to the proposed rule change.[3] On August 26, 2005, the PCX filed Amendment No. 2 to the proposed rule change.[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 PCX, through its wholly-owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. With this filing, the Exchange proposes to add one new order type, the Passive Liquidity Order (''PL Order''). The changes described in this rule proposal would add new Rule 7.31(h)(4) and amend existing Rule 7.37(b).

The text of the proposed rule change, as amended, appears below. Additions are in italics. Deleted items are in brackets.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1, which replaced the original filing, made technical and clarifying changes to the proposed rule change.

[4] Amendment No. 2, which replaced Amendment No. 1, clarified the execution priority of Passive Liquidity orders in PCXE Rule 7.37, as compared to other orders that are part of the Display Order Process and the Working Order Processes, and as compared to Directed Fills in the Display Order Process. In addition, Amendment No. 2 made other technical and clarifying changes to the proposed rule change.

Rule 7

Equities Trading

Rule 7.31(a)–(g)—No Change

(h) Working Order. Any order with a conditional or undisplayed price and/or size designated as a ''Working Order'' by the Corporation, including, without limitation:

(1)–(3)—No Change

(4) Passive Liquidity Order. An order to buy or sell a stated amount of a security at a specified, undisplayed price. Passive Liquidity Orders will be executed in the Working Order Process after all other Working Orders except undisplayed discretionary order interest. Passive Liquidity Orders with a price superior to that of Directed Fills will have price priority and will execute ahead of inferior priced Directed Fills in the Directed Order Process. Passive Liquidity Orders with a price superior to that of displayed orders will have price priority and will execute ahead of inferior priced displayed orders in the Display Order Process.

* * * * *

Rule 7.37

(a) Step 1: Directed Order Process. During Core Trading Hours only, orders may be matched and executed in the Directed Order Process as follows:

(1) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's designated Market Maker has a standing instruction for a Directed Fill to the Archipelago Exchange, the Directed Order shall be executed against the Directed Fill of the designated Market Maker*, unless there is a Passive Liquidity Order as defined in PCXE Rule 7.31(h) with a price superior to that of the Directed Fill, in which case the Passive Liquidity Order will have price priority and will execute ahead of inferior priced Directed Fills in the Directed Order Process.*

(2)–(4)—No Change.

(b) If an incoming marketable order has not been executed in its entirety pursuant to paragraph (a) of this Rule, any remaining part of the order shall be routed to the Display Order Process.

(1) *Step 2: Display Order Process.*

(A) An incoming marketable order shall first attempt to be matched for execution against orders in the Display Order Process at the display price of the resident order for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller. *Passive Liquidity Orders as defined in PCXE Rule 7.31(h) with a price superior to that of displayed orders will have price priority and will execute ahead of inferior priced displayed orders in the Display Order Process.* For the purposes of this subsection, the size of an incoming Reserve Order includes the displayed and reserve size, and the size of the portion of the Reserve Order resident in the Display Order Process is equal to its displayed size. If the incoming marketable order has not been executed in its entirety, the remaining part of the order shall be routed to the Working Order Process.

(B)—No Change.

Rule 7.37(b)(2)

(2) *Step 3: Working Order Process.*

(A) An incoming marketable order shall be matched for execution against orders in the Working Order Process in the following manner:

(i) An incoming marketable order shall be matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, at the limit price *or in the case of a Passive Liquidity Order, at its price*), for the total amount of stock available at that price or for the size of the incoming order, whichever is smaller.

Rule 7.37(b)(2)(A)(ii)–(d)—No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of its continuing efforts to enhance participation on the ArcaEx facility, the Exchange proposes to add a new order type for use by Users.[5] The new order type, the PL Order, is an order to buy or sell a stated amount of a security at a specified, undisplayed price.

PL Order Type Features

A PL Order would be an order to buy or sell a stated amount of a security at a specified, undisplayed price. PL Orders must be entered with a volume of at least 200 shares and will only be permitted in round lot denominations. ArcaEx pegging, reserve, and discretionary functionality will not be available to modify PL Orders.[6] PL Orders will not route out of ArcaEx to other market centers and will not execute against incoming orders sent via the Intermarket Trading System.

PL Order Execution Priority in ArcaEx

ArcaEx maintains an electronic file of orders called the Arca book.[7] The Arca book is divided into three components: the Display Order Process, the Working Order Process and the Tracking Order Process.[8] Arca ranks and maintains limit orders in the Arca book according to price/time priority and generally affords priority to displayed orders in the Display Process and prices over undisplayed orders in the Working Order Process, sizes and prices.

PL Orders would be executed in the Working Order Process after all other orders including reserve orders and the display portion of discretionary orders at a particular price level. PL Orders would, however, take precedence over undisplayed discretionary order interest. PL Orders with a price superior to that of Directed Fills would have price priority and would execute ahead of inferior priced Directed Fills in the Directed Order Process. Also, PL Orders with a price superior to that of displayed orders would have price priority and would execute ahead of inferior priced displayed orders in the Display Order Process.

The Exchange believes that the implementation of the aforementioned rule changes relating to ArcaEx order processing would enhance order execution opportunities on ArcaEx. The Exchange believes that the proposed order type would allow for additional opportunities for liquidity providers to passively interact with interest in the Arca book.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of

[5] *See* PCXE Rule 1.1(yy) for the definition of ''User.''

[6] More specifically, the pegging functionality will not be available for PL Orders in that the Passive Liquidity Order price will not automatically track the NBBO. *See* PCXE Rule 7.31(cc). Further, reserve functionality, meaning undisplayed size, and discretionary functionality, meaning undisplayed prices, will not be available for PL Orders since the Passive Liquidity Order price and size are undisplayed by definition.

[7] *See* PCXE Rule 1.1(a).

[8] The Directed Order Process, as set forth in PCXE Rule 7.37, precedes the Display, Working, and Tracking Order Processes, but is not operable at this time on ArcaEx. ArcaEx intends to implement a new Directed Process in a future filing.

[9] 15 U.S.C. 78f(b).

Section 6(b)(1) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requested that the proposed rule change be given expedited review and accelerated approval pursuant to Section 19(b)(2) of the Act. The Exchange believes that the proposed rule proposal is consistent with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Exchange believes that its proposal to implement the PL Order adds significant value to investors and Users, will enhance available order interaction opportunities, and does not raise any new regulatory issues. Accordingly, the Exchange believes that its proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, protect investors and the public interest.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

[10] 15 U.S.C. 78f(b)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR-PCX–2005–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-PCX–2005–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–53 and should be submitted on or before October 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18762 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52425; File No. SR–Phlx–2005–27]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Modification of the Definition of Firm Customer Quote Size and the Removal of Certain Restrictions on Sending Secondary P/A Orders Under the Linkage Plan

September 14, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 26, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 Phlx. On September 2, 2005, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules governing the operation of the intermarket option linkage to conform with a proposed amendment[4] to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[5] The

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] In Amendment No. 1, the Exchange made clarifying changes to the proposed rule text relating to the availability of Participant exchanges' automatic execution system.

[4] *See* Securities Exchange Act Release No. 52401 (September 9, 2005) (File No. 4–429).

[5] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option market linkage proposed by the American Stock Exchange, LLC, Chicago Board Options Exchange, Incorporated, and International Securities Exchange, Inc. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4,

Continued

Exchange is proposing to amend: (i) Exchange Rule 1083 by modifying the definition of Firm Customer Quote Size (''FCQS''), and (ii) Exchange Rule 1084 by deleting certain restrictions on sending secondary Principal Acting as Agent Orders (''P/A Orders'')[6] pursuant to the Linkage Plan. The text of the proposed rule change, as amended, is available on Phlx's Web site at (*www.phlx.com*), at the Phlx's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the definition of FCQS to reflect current practices of the respective Linkage Plan participants (''Participants'')[7] relating to disseminated size that were not in existence at the time the Linkage Plan was originally adopted. At the time the Linkage Plan was originally adopted, options quote sizes generally were not disseminated through the Options Price Reporting Authority and most Participants employed automatic execution systems that guaranteed automatic executions of orders under a certain contract size (which was generally a static number). At that time, the FCQS was calculated based on the number of contracts the sending and receiving Participants guaranteed they would automatically execute. Now that all Participants disseminate dynamic quotes with size, the Exchange believes that it is appropriate to calculate the FCQS based on the size of the disseminated quotation of the Participant receiving the P/A Order. Accordingly, the Exchange proposes to amend Exchange Rule 1083(g) to define FCQS as the size of the disseminated quotation of the Participant receiving the P/A Order.

Another purpose of the proposed rule change is to eliminate a 15-second waiting period for sending a secondary P/A Order pursuant to Exchange Rule 1084(c)(2), which governs the manner in which a P/A Order larger than the FCQS can be broken into smaller P/A Orders. Currently, an initial P/A Order can be sent to the Participant whose disseminated price that is the National Best Bid or Offer (''NBBO'') for a size that is the FCQS. If the receiving Participant that is disseminating the NBBO continues to disseminate the same price after 15 seconds from the execution of the initial P/A Order, a secondary P/A Order can be sent for at least the lesser of: (i) The size of the disseminated quote; (ii) 100 contracts; or (iii) the remainder of the customer order underlying the P/A Orders. The Exchange proposes to eliminate the 15-second wait period because the dynamic quotes with size now employed by the Participants obviate the need for a manual quote refresh period for P/A Orders. The Exchange also proposes to amend Exchange Rule 1084 to clarify that an automatic execution of a P/A Order is not required if the P/A Order is larger than the Firm Customer Quote Size, and that automatic execution will be provided for P/A orders at or below the FCQS, if automatic execution is available.[8]

2. Statutory Basis

The Exchange believes that its proposed rule change, as amended, is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade, by amending the definition of FCQS to reflect current practices of the Participants relating to disseminated size, and by eliminating the 15-second wait period for the sending of secondary P/A Orders to reflect current systems in place on the various Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

2000). Subsequently, upon separate requests by the Phlx, Pacific Exchange, Inc. and Boston Stock Exchange, Inc. the Commission issued orders to permit these exchanges to participate in the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000), 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000) and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] A P/A Order is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[7] Section 2(24) of the Linkage Plan defines ''Participant'' as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan.

[8] The Commission made technical corrections to this sentence pursuant to a telephone conversation with Phlx, as noted herein. Telephone call between Tim Fox, Special Counsel, Commission, and Richard Rudolph, Vice President and Counsel, Phlx on September 12, 2005.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section Room.

Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Phlx-2005–27 and should be submitted on or before October 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18768 Filed 9–20–05; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 5191]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Terracotta Warriors of Emperor Qin Shihuang''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Terracotta Warriors of Emperor Qin Shihuang,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The John F. Kennedy Center for the Performing Arts, Washington, DC, from on or about October 1, 2005 to on or about October 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 Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/453–8050). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 14, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–18848 Filed 9–20–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 5166]

Shipping Coordinating Committee; Notice of Meeting

The Department of State's Shipping Coordinating Committee; Subcommittee on Ocean Dumping will hold an open meeting on Wednesday, October 19, 2005, from 1 p.m. to 3 p.m. to obtain public comment on the issues to be addressed at the October 24–28, 2005, Twenty-seventh Consultative Meeting of Contracting Parties to the London Convention. The London Convention of 1972 is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-eighth Scientific Group Meeting of the London Convention that was held in London, United Kingdom from May 23–27, 2005.

In addition, participants at this meeting will discuss plans for ratification, by the United States, of the 1996 London Protocol. The Protocol is a treaty signed by the United States in 1998 that is separate from the London Convention. It sets forth a regime that is more comprehensive, more stringent, and more protective of the marine environment than the London Convention.

The public meeting will be held at the Department of State located at 2201 C Street, NW., Washington, DC 20520 in Room 7835. Interested members of the public are invited to attend, up to the capacity of the room.

For further information and pre-clearance into the Department of State, please contact: Anne Chick, Office of Ocean Affairs, U.S. Department of State, Room 5805, 2201 C Street, NW., Washington, DC 20520, telephone (202) 647–3879, or email *chickal@state.gov* by Monday, October 17, 2005.

Dated: September 15, 2005.

Clayton Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–18849 Filed 9–20–05; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Trade Advisory Committee on Small and Minority Business (ITAC–11)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of a partially opened meeting.

SUMMARY: The Industry Trade Advisory Committee on Small and Minority Business (ITAC–11) will hold a meeting on Monday, October 3, 2005, from 9 a.m. to 3 p.m. The meeting will be opened to the public from 9 a.m. to 12 p.m. and closed to the public from 12 p.m. to 3 p.m.

DATES: The meeting is scheduled for October 3, 2005, unless otherwise notified.

ADDRESSES: The meeting will be held at the Marriott Greensboro High Point—Magnolia Inn, located at One Marriott Drive, Greensboro, North Carolina 27409 (336) 852–6450.

FOR FURTHER INFORMATION CONTACT: Heather Tomasetti, DFO for ITAC–11 at (202) 482–3487, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: During the opened portion of the meeting the following agenda items will be considered.

- North Carolina Trade Policy Agenda Update by Senator Kay Hagan

[11] 17 CFR 200.30–3(a)(12).

• Overview of the Greensboro Triad Foreign Trade Zone Operations
• Overview of Greensboro Chamber of Commerce, Small Business Development Program, activities and Fiscal Year 2006 Trade Agenda
• U.S. Commercial Service Programs and Services to Assist Small and Medium-Sized Business
• Briefing on Updated Functions of ''Notify U.S.'' Service
• Textile Industry Update and Opportunities for North Carolina Manufacturers

Christina R. Sevilla,

Acting Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 05–18822 Filed 9–20–05; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review for Buffalo Niagara International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Niagara Frontier Transportation Authority for Buffalo Niagara International Airport under provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Buffalo Niagara International Airport under part 150 in conjunction with the noise exposure maps, and that this program will be approved or disapproved on or before March 6, 2006.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 7, 2005. The public comment period ends November 6, 2005.

FOR FURTHER INFORMATION CONTACT: Maria Stanco, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, New York 11530. Comments on the proposed noise compatibility programs should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Buffalo Niagara International Airport are in compliance with applicable requirements of part 150, effective September 7, 2005. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 6, 2006. This notice also announces the availability of this program for public review and comment.

Under section 103 of the Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

As an airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing non-compatible uses and for the prevention of the introduction of additional non-compatible uses.

The Niagara Frontier Transportation Authority submitted to the FAA in a letter dated, March 7, 2005, noise exposure maps, descriptions and other documentation. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 10(b) of the Act.

The FAA has completed its review of the noise exposure maps (NEMs) and related description submitted by the Niagara Frontier Transportation Authority. The specific maps under consideration are the 2003 Noise Exposure Map (Chapter 4—Sheet 1) and the 2008 Noise Exposure Map (Chapter 5—Sheet 1). Additional required information on Flight Tracks is found on supplemental graphics (Chapter 4—Sheet 3, Chapter 5—Sheet 3). Narrative description of: the methodology used to develop the NEMs; noncompatible land uses; numbers of residents within the 65 contours; fleet mix and runway use is found in Chapters 3, 4 and 5. The FAA has determined that these maps and accompanying narrative for Buffalo Niagara International Airport are in compliance with the applicable requirements. This determination is effective on September 7, 2005. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rest exclusively with the airport operator, which submitted these maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, which under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Buffalo Niagara International Airport, effective on September 7, 2005. Preliminary review of the submitted material indicated that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before March 6, 2006.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR part 150, section 150.33. The primary consideration in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land used and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors, all comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 440, Garden City, NY 11530.

Niagara Frontier Transportation Authority, 181 Ellicott St., Buffalo, NY 14203; and on-line at *www.nfta.com/airport*.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Garden City, New York, September 7, 2005.

Otto Suriani,

Acting Manager, New York Airports District.

[FR Doc. 05–18814 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact/ Record of Decision (FONSI/ROD) for the Proposed New Air Traffic Control Tower at the St. Louis Downtown Airport in Cahokia, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of a Final Environmental Assessment and Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the Proposed New Air Traffic Control Tower at the St. Louis Downtown Airport in Cahokia, Illinois.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared and approved on September 8, 2005, a Finding of No Significant Impact/Record of Decision (FONSI/ROD) based on the Final Environmental Assessment (Final EA) for the following proposed action at the St. Louis Downtown Airport: the construction of a new Air Traffic Control Tower, associated support building, parking lot, and access road.

The FAA prepared the Final EA in accordance with the National Environmental Policy Act of 1969 and the FAA's regulations and guidelines for environmental documents. The Final EA was reviewed and evaluated by the FAA and was accepted on September 6, 2005 as a Federal document by the FAA's Responsible Federal Official.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia Marcks, Environmental Engineer, ANI–430, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294–7494.

SUPPLEMENTARY INFORMATION:

Background

The existing Air Traffic Control Tower (ATCT) at the St. Louis Downtown Airport was built in 1973 and soon after was expanded by the addition of a mobile office trailer to house administrative personnel. The current tower stands approximately 52 feet in height with a controller's eye height of approximately 41 feet. Continual visibility problems, due to existing trees in an adjacent residential development, impede the controller's line of sight for airfield movement areas and runway approaches. The visibility problem, due to trees obscuring significant portions of two runway ends, 4 and 30L, are ongoing and worsening. The proposed new ATCT, with a total elevation of 553.8′ MSL (141′ 10″ AGL) and a controller eye height of 528.3′ MSL (116′ 4″ AGL) would significantly improve visual capabilities.

Air traffic controller equipment in the existing tower has not been significantly upgraded since the tower was constructed in 1973, although there has been nearly a 50 percent increase in airport operations over the past 30 years. Annual aircraft operations recorded during operating hours of the ATCT (7 a.m. to 9 p.m.), in the early 1970s, when the existing tower was constructed, totaled approximately 115,000. In 2001, the total number of operations recorded between the 7 a.m. to 9 p.m. timeframe was nearly 170,000. The proposed new ATCT would allow for modernized equipment, enhancing the level of safety for the current number of aircraft operations at the St. Louis Downtown Airport.

The Final EA has been prepared in accordance with the National Environmental Policy Act of 1969, as amended, FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' and FAA Order 5050.4A, ''Airport Environmental Handbook''. The proposed development action is consistent with the National Airspace System Plan prepared by the U.S. Department of Transportation, Federal Aviation Administration (FAA).

A Final Environmental Assessment and the Finding of No Significant Impact/Record of Decision is available for public viewing during normal business hours at the Federal Aviation Administration, Great Lakes Region, ANI–430, 2300 East Devon Avenue, Des Plaines, IL 60018 (by appointment due to security, 847–294–7494).

The Final EA and FONSI/ROD will be available through October 19, 2005.

Issued in Des Plaines, Illinois September 8, 2005.

Art V. Schultz,

Acting Manager, Chicago NAS Implementation Center, ANI–401, Great Lakes Region.

[FR Doc. 05–18813 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2005–58]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 11, 2005.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number

FAA–2005–22250] 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.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, or John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on September 15, 2005.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2005–22250.

Petitioner: NetJets Aviation, Inc.

Section of 14 CFR Affected: 14 CFR 91.205(b)(12).

Description of Relief Sought: To permit NetJets Aviation, Inc., to operate an aircraft for hire over water beyond power-off gliding distance from shore without at least one pyrotechnic signaling device available on the aircraft.

[FR Doc. 05–18807 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held October 14, 2005, from 9 a.m.–12 p.m.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (2nd Floor), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting.

Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room. Attendees with laptops will be required to register them at the security desk upon arrival and departure. Agenda items will be posted on *www.rtca.org* Web site.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–18811 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems Second Joint Plenary Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 205/EUROCAE Working Group 71 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 205/EUROCAE Working Group 71: Software Considerations in Aeronautical Systems.

DATES: The meeting will be held October 24–28, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at EUROCONTROL Headquarters, Rue de la Fusee, 96, B–1130 Brussels, Belgium.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) EUROCONTROL, telephone +32 2 729 9011; fax +32 2 729 0944.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 205/EUROCAE Working Group 71 meeting. **Note:** On arrival at EUROCONTROL please have photo identification available (either a passport, a drivers license bearing a photograph or an identity card) to assist you in your badge being issued. The agenda will include:

• October 24:

• Sub-group Meetings: Members liaise with their individual chairs for details.

• October 25:

• Registration.

• Opening Plenary Session (Welcome and Introductory Remarks, Review/Accept Agenda and 1st Joint Plenary Summary).

• EUROCONTROL Presentation.

• CNS–ATM New Term of Reference and proposal for handling it.

• Report of Sub-Group Activity: SG3, SG4, SG5, SG6, SG1, SG7.

• Issue List.

• Other Committee/Other Documents Interfacing Reports: CAST; WG–60/SC–200; SD–203; WG–63/SAE S–18.

• Development of Modified Sub-Groups, other.

• Sub-Group Break Out Sessions.

• October 26:

• Sub-Group Break Out Sessions.

• Sub-Group Joint Sessions (Other Joint Sessions as Required).

• October 27:

• Stand-Up Plenary to Co-ordinate Efforts.

• Sub-Group Break Out Sessions.

• Sub-Group Joint Sessions (Other Joint Sessions as Required).

• October 28:

• Sub-Group Reports: SG3, SG4, SG5, SG6, SG7, SG2.

• SG1: SCWG Document Integration Sub-Group.

• Closing Plenary Session (Other Business, Date and Place of Next Meeting, Meeting Evaluation, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–18808 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 206: Aeronautical Information Services Data Link

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 206 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information Services Data Link.

DATES: The meeting will be held on October 11–14, 2005 from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., Colson Board Room, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463. 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 206 meeting. The agenda will include:

• October 11:

• Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Announcement of Sub Chairs, Review Terms of Reference).

• Discussion.

• Presentations.

• Doug Arbuckle: 3–3:15 p.m. The JPDO's 2025 Concept for the Next Generation Air Transportation System.

• Ernie Dash: Cockpit Use of NEXRAD; Base Reflectivity vs. Composite Reflective.

• David Helms: World Meteorological Organization's AMDAR Program.

• Others—as approved.

• Break Out:

• Subgroup 1—Weather Data Link.

• Subgroup 2—NOTAMs and AIS Data Link.

• Re-convene Plenary, as determined by the Leadership.

• October 12–13:

• Subgroup 1 and 2 meetings.

• October 14:

• Subgroup 1 and 2 meetings.

• Re-convene Plenary, Subgroup Report outs:

• Subgroup 1—Weather Data Link.

• Subgroup 2—NOTAMs and AIS Data Link.

• Closing Session (Other Business, Data and Place of Next Meeting, Closing Remarks, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–18809 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held October 4–7, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at International Civil Aviation Organization (ICAO), 999 University Street, Montreal, Quebec H3C 5H7, Canada.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036, (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) ICAO—Mr. Chris Dalton; (PhoneP 514–954–8219, ext. 6710; (Fax) 514–954–6759, (e-mail) *cdalton@icao.int.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Ace (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting **Note:** Submit your name and company to *tom.kraft@faa.gov* if you will be attending the meeting. If you need information on the Montreal area, you can go to *http://www.tourism-montreal.org.* The two hotels listed below are within walking distance to ICAO and a short taxi from the airport. When contacting them, specify that you are attending the ''ICAO and RTCA SC189/EUROCAE WG–53 Joint Meeting on ATS Safety and Interoperability Requirements.'' Dress Code for this meeting is Formal/suit and tie.

Marriott Chateau Champlain, 1050 De La Guachetiere, Montreal, Quebec H3B4C9, Tel: 514–878–9000, Fax: 514–878–6761.

Hilton Montreal Bonaventure, 900 De La Guachetiere, Montreal, Quebec H3B4C9, Tel: 514–878–2332, Fax: 514–878–3881.

The plenary agenda will include:

• October 4:

• Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/ Approval of Meeting Mintues).

• SC–189/WG–53 co-chair progress report.

• Group A: Progress work on Oceanic SPR Standard (PU–24).

• Group B: Progress work on FANS 1/ A–ATN Interoperability Standard (PU–40).

• October 5–6:

• Group A: Progress work on Oceanic SPR Standard (PU–24).

• Group B: Progress work on FANS 1/ A–ATN Interoperability Standard (PU–40).

• October 7:

• Closing Plenary Session.

• Debrief on progress of the week.

• Review schedule and action items.

Attendance is open to the interested public but limited to space availability.

With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–18810 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. RSPA–2005–20036 (Notice No. 05–8)]

Information Collection Activities

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on certain information collections pertaining to hazardous materials transportation for which PHMSA intends to request renewal from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before November 21, 2005.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2005–20036 (Notice No. 05–8) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket Number RSPA–2005–20036 (Notice No. 05–8).

The Dockets Management System is located on the Plaza Level of the Nassif Building at the above address. Public dockets may be reviewed at the address above between the hours of 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at *http://hazmat.dot.gov.*

Requests for a copy of an information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR Parts 110 and 130 and the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register.**

PHMSA requests comments on the following information collections:

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Summary: This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include part 105, subpart A and subpart B, ''Hazardous Materials Program Definitions and General Procedures;'' part 106, subpart B, ''Participating in the Rulemaking Process;'' part 107, subpart B, ''Exemptions;'' and part 107, subpart C, ''Preemption.'' The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. We are authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in parts 105, 106 or 107.

(2) *Appeals:* Except as provided in '' 106.40(e), any person may submit an appeal to our actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Exemption:* Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (*e.g.*, alternative packaging, test procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) *Application for Preemption Determination:* Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Associate Administrator for a determination whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of section 5125 (see also 49 CFR 107.202); and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or an Indian tribe acknowledges is preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued there under and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by PHMSA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106. Applications for exemptions, preemption determinations and waivers of preemption are covered under subparts B and C of part 107. Rulemaking procedures enable PHMSA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for PHMSA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Recordkeeping:

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,219.

Frequency of collection: On occasion.

Title: Radioactive (RAM) Transportation Requirements.

OMB Control Number: 2137–0510.

Summary: This information collection consolidates and describes the information collection provisions in the HMR involving the transportation of radioactive materials in commerce. Information collection requirements for RAM include: Shipper notification to consignees of the dates of shipment of RAM; expected arrival; special loading/unloading instructions; verification that shippers using foreign-made packages hold a foreign competent authority certificate and verification that the terms of the certificate are being followed for RAM shipments being made into this country; and specific handling instructions from shippers to carriers for fissile RAM, bulk shipments of low specific activity RAM and packages of RAM which emit high levels of external radiation. These information collection requirements help to establish that proper packages are used for the type of radioactive material being transported; external radiation levels do not exceed prescribed limits; and packages are handled appropriately and delivered in a timely manner, so as to ensure the safety of the general public, transport workers, and emergency responders.

Affected Public: Shippers and carriers of radioactive materials in commerce.

Recordkeeping:

Number of Respondents: 3817.

Total Annual Responses: 21,519.

Total Annual Burden Hours: 15,270.

Frequency of collection: On occasion.

Title: Hazardous Materials Security Plans.

OMB Control Number: 2137–0612.

Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 42,000.

Total Annual Responses: 42,200.

Total Annual Burden Hours: 247,250.

Frequency of collection: On occasion.

Title: Subsidiary Hazard Class and Number/Type of Packagings.

OMB Control Number: 2137–0613.

Summary: The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. The Subcommittee on Surface Transportation recommended that additional Federal requirements mandating retention of shipping papers be imposed in order to facilitate documentation of violations by the law enforcement community. Subsequently, the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA), Public Law 103–311, amended the HMR to require shippers and carriers to retain copies of each shipping paper for one year. Section 5110(e) of the HMTAA requires shippers and carriers to retain copies (or an electronic image) of each shipping paper for one year to be accessible through their respective principal places of business. Amendment to section 5110(e) was self-executing as of August 26, 1994. The Environmental Protection Agency (EPA), and the Internal Revenue Service (IRS) require retention of shipping papers for 3 years or more for certain hazardous materials shippers and carriers. Since most companies (common carriers) already retain these records to meet these other Federal or State requirements, Docket HM–207B, which incorporated this into the HMR, did not significantly impact their paperwork burden. However, private carriers and intrastate shippers and carriers are now required to retain copies of each hazardous material shipping paper for 1 year under section 5110(e). Permanent shipping papers are authorized to reduce the burden on those entities that ship the same materials on a continuous basis.

Shipping papers and emergency response information are basic hazard communication tools relative to the transportation of hazardous materials. The definition of a shipping paper in section 171.8 of the HMR includes a shipping order, bill of lading, manifest,

or other shipping document serving a similar purpose and containing the information required by section 172.202, 172.203, and 172.204. A shipping paper with emergency response information must accompany most hazardous materials shipments and be readily available at all times during transportation. It serves as the principal source of information regarding the presence of hazardous materials, identification, quantity, and emergency response procedures. Shipping papers also serve as the source of information for compliance with other requirements, such as the placement of rail cars containing different hazardous materials in trains, prevent the loading of poisons with foodstuffs, the separation of incompatible hazardous materials, and the limitation of radioactive materials that may be transported in a vehicle or aircraft. Shipping papers and emergency response information serve as a means of notifying transport workers that hazardous materials are present. Most importantly, shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies.

It is necessary that hazardous materials and emergency response information be displayed on shipping papers in a uniform manner to ensure accuracy and consistency. DOT regulations require that when hazardous materials and materials not subject to the HMR are described on the same shipping paper, the hazardous materials entries required by section 172.202 and those additional entries that may be required by section 172.203 must be entered first, or entered in a color that clearly contrasts with any description on the shipping paper of materials not subject to the requirements, or highlighted, or identified by the entry with an ''x'' in an HM column opposite the hazardous material entry. The subsidiary hazard class or subsidiary division number(s) must also be entered in parentheses following the primary hazard class or division number on shipping papers under § 172.202. In addition, the number and type of packagings must also be indicated on shipping papers such as drums, boxes, jerricans, etc. as part of the basic shipping description.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 250,000.

Total Annual Responses: 6,337,500.

Total Annual Burden Hours: 63,309.

Frequency of collection: On occasion.

Issued in Washington, DC, on September 15, 2005.

Susan Gorsky,

Acting Director, Office of Hazardous Materials Standards.

[FR Doc. 05–18805 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03
2004	473.41	86.40

Effective Date: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Decker, (202) 565–1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339].

By the Board, Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18840 Filed 9–20–05; 8:45 am]

BILLING CODE 4915–00–P

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34746]

Kansas & Oklahoma Railroad, Inc.—Acquisition Exemption—Rail Line of Union Pacific Railroad Company

Kansas & Oklahoma Railroad, Inc. (K&O), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire (by purchase) from Union Pacific Railroad Company (UP) a 27-mile rail line between milepost 485.0 at Newton, KS, and milepost 512.0, at McPherson, KS. K&O has leased and operated the line under an agreement with UP since September 2002.[1]

K&O certifies that its projected annual revenues as a result of this transaction will not result in K&O becoming a Class II or Class I rail carrier. K&O also states that its current annual revenues exceed $5 million. This triggers the 60-day advance labor notice requirement at 49 CFR 1150.42(e). However, K&O requested a waiver of that requirement which was granted by the Board in a decision in this proceeding served on September 15, 2005.

As a result of the grant of the waiver, the earliest this transaction could have been consummated was on or after September 15, 2005, the service date of the waiver decision, because the Board's grant of the waiver had the effect of making the exemption effective on September 15, 2005.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34746, 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 Karl Morell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 15, 2005.

[1] *See Kansas & Oklahoma Railroad, Inc.—Lease Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34232 (STB served Oct. 1, 2002).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18788 Filed 9–20–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, James Carroll, Deputy General Counsel
2. Deborah N. Nolan, Commissioner, Large and Midsize Business
3. Eric Solomon, Deputy Assistant Secretary for Regulatory Affairs

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 13, 2005.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. 05–18802 Filed 9–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Office of the General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Donald T. Rocen, Deputy Chief Counsel (Operations)
2. William D. Alexander, Associate Chief Counsel (Corporate)
3. Peter Labelle, Division Counsel (Large and Mid-Size Business)
4. Catherine Livingston, Assistant Chief Counsel (Exempt Organizations/ Employment/ Tax/Government Entities)
5. Patricia Donahue, Area Counsel, Division Counsel (Small Business/ Self-Employed) This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 13, 2005.

Donald L. Korb,

Chief Counsel, Internal Revenue Service.

[FR Doc. 05–18803 Filed 9–20–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0556.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0556'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants admitted to a VA medical facility complete VA Form 10–0137 to appoint a health care agent to

make decision about his or her medical treat and to record specific instructions about their treatment preferences in the event they no longer can express their preferred treatment. VA's health care professionals use the data to carry out the claimant's wish.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 29, 2005, at pages 22391–22392.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 128,127 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 256,253.

Dated: September 9, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–18874 Filed 9–20–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0031]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 21, 2005.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374 or FAX (202) 565–5950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0031.''

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0031'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veteran's Supplemental Application for Assistance in Acquiring Specially Adapted Housing, VA Form 26–4555c.

OMB Control Number: 2900–0031.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans complete VA Form 26–4555c to apply for specially adapted housing grant. VA uses the data collected to determine if it is economically feasible for a veteran to reside in specially adapted housing and to compute the proper grant amount.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 3, 2005 at page 22997.

Affected Public: Individuals or households.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 600.

Dated: September 12, 2005.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–18875 Filed 9–20–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's eligibility for tutorial assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2005.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0171'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application and Enrollment Certification for Individualized Tutorial Assistance (38 U.S.C. Chapters 30, 31, 32, 35; 10 U.S.C. Chapter 1606; Section 903 of Pub. L. 96–342, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986), VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: Students receiving VA educational assistance and need tutoring to overcome a deficiency in one or more course complete VA Form 22–1990t to apply for supplemental allowance for tutorial assistance. The student must provide the course or courses for which he or she requires tutoring, the number of hours and charges for each tutorial session and the name of the tutor. The tutor must certify that he or she provided tutoring at the specified charges and that he or she is not a close relative of the student. Certifying officials at the student's educational institution must certify that the tutoring was necessary for the student's pursuit of program; the tutor was qualified to conduct individualized tutorial assistance; and the charges for the tutoring did not exceed the customary charges for other students who receive the same tutorial assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 400 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 400.

Number of Responses Annually: 800.

Dated: September 9, 2005.

By direction of the Secretary.

Denise I. McLamb,

Program Analyst, Records Management Service.

[FR Doc. 05–18876 Filed 9–20–05; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
September 21, 2005

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

Milk in the Appalachian and Southeast Marketing Areas; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A15 and AO–366–A44; DA–03–11]

Milk in the Appalachian and Southeast Marketing Areas; Partial Decision on Proposed Amendments to Marketing Agreements and to Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; partial final decision.

SUMMARY: This partial final decision adopts proposed amendments to the Appalachian and Southeast marketing areas as contained in a partial recommended decision published in the **Federal Register** on May 20, 2005. Specifically, this decision would expand the Appalachian milk marketing area, eliminate the ability to simultaneously pool the same milk on the Appalachian or Southeast order and on a State-operated milk order that has marketwide pooling, and amend the transportation credit provisions of the Southeast and Appalachian orders. The orders as amended are subject to approval by producers in the affected markets.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *antoinette.carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Analysis and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During February 2004, the month in which the hearing was held, the milk of 7,311 dairy farmers was pooled on the Appalachian (Order 5) and Southeast (Order 7) milk orders (3,395 Order 5 dairy farmers and 3,916 Order 7 dairy farmers). Of the total, 3,252 dairy farmers (or 96 percent) and 3,764 dairy farmers (or 96 percent) were considered small businesses on the Appalachian and Southeast orders, respectively.

During February 2004, there were a total of 36 plants associated with the Appalachian order (25 fully regulated plants, 7 partially regulated plants, 1 producer-handler, and 3 exempt plants) and a total of 51 plants associated with the Southeast order (32 fully regulated plants, 6 partially regulated plants, and 13 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 13 (or 36 percent) and 13 (or 25 percent), respectively.

The proposed amendments adopted in this partial final decision would expand the Appalachian milk marketing area to include 25 counties and 15 cities in the State of Virginia that currently are not in any Federal milk marketing area (the partial recommended decision inadvertently referenced ''14 cities'' verses ''15 cities''). This decision adopts proposed amendments to the producer milk provisions of the Appalachian and Southeast milk orders that would prevent producers who share in the proceeds of a state marketwide pool from simultaneously sharing in the proceeds of a Federal marketwide pool on the same milk. In addition, this decision adopts proposed amendments to the transportation credit provisions of the Appalachian and Southeast orders.

The proposed amendments to expand the Appalachian marketing area would likely continue to regulate under the Appalachian order two fluid milk distributing plants located in Roanoke, Virginia, and Lynchburg, Virginia, and shift the regulation of a distributing plant located in Mount Crawford, Virginia, from the Northeast order to the Appalachian order.

The proposed amendments would allow the Kroger Company's (Kroger) Westover Dairy plant, located in Lynchburg, Virginia, that competes for a milk supply with other Appalachian order plants to continue to be regulated under the order if it meets the order's minimum performance standards. The plant has been regulated by the Appalachian order since January 2000. In addition, the proposed amendments would remove the disruption that occurs as a result of the Dean Foods Company's (Dean Foods) Morningstar Foods plant, located in Mount Crawford, Virginia, shifting its regulatory status under the Northeast order.

The Appalachian order currently contains a ''lock-in'' provision that provides that a plant located within the marketing area that meets the order's minimum performance standard will be regulated by the Appalachian order even if the majority of the plant's Class I route sales are in another marketing area. The proposed expansion along with the lock-in provision would regulate fluid milk distributing plants physically located in the marketing area that meet the order's minimum

performance standard even if the majority of their sales are in another Federal order marketing area. Accordingly, the proposed amendments would regulate three distributing plants under the Appalachian order: Kroger's Westover Dairy, located in Lynchburg, Virginia; Dean Foods' Morningstar Foods plant, located in Mount Crawford, Virginia; and National Dairy Holdings' Valley Rich Dairy, located in Roanoke, Virginia. Based on Small Business Administration criteria these are all large businesses.

This decision adopts proposed amendments to the transportation credit provisions of the Appalachian and Southeast orders. The Appalachian and Southeast orders contain provisions for a transportation credit balancing fund from which payments are made to handlers to partially offset the cost of moving bulk milk into each marketing area to meet fluid milk demands.

The proposed amendments adopted in this final decision would increase the maximum rate of the transportation credit assessment of the Appalachian and Southeast orders by 3 cents per hundredweight. Specifically, the proposed amendments would increase the maximum rate of assessment for the Appalachian order from 6.5 cents per hundredweight to 9.5 cents per hundredweight while increasing the maximum rate of assessment for the Southeast order from 7 cents per hundredweight to 10 cents per hundredweight. Increasing the transportation assessment rates will tend to minimize the exhaustion of the transportation credit balancing fund when there is a need to import supplemental milk from outside the marketing areas to meet Class I needs.

Currently, the Appalachian and Southeast orders provide that transportation credits shall apply to the milk of a dairy farmer who was not a ''producer'' under the order during more than two of the immediately preceding months of February through May but not more than 50 percent of the milk production of the dairy farmer, in aggregate, was received as producer milk under the order during those two months. The proposed amendments contained in this final decision would provide the Market Administrator of the Appalachian order and the Market Administrator of the Southeast order the discretionary authority to adjust the 50 percent milk production standard.

This decision adopts proposed amendments that would prohibit the simultaneous pooling of the same milk on the Appalachian or Southeast milk marketing orders and on a State-operated order that provides for the marketwide pooling of milk. Since the 1960's, the Federal milk order program has recognized the harm and disorder that result to both producers and handlers when the same milk of a producer is simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unwarranted competitive advantages.

The need to prevent ''double pooling'' became critically important as distribution areas expanded, orders merged, and a national pricing surface was adopted. Milk already pooled under a State-operated program and able to simultaneously be pooled under a Federal order has essentially the same undesirable outcomes that Federal orders once experienced and subsequently corrected. Accordingly, proposed amendments to eliminate the ''double pooling'' of the same milk on the Appalachian or Southeast order and a State-operated milk order that has marketwide pooling are adopted.

The proposed amendments would be applied to all Appalachian and Southeast order participants (producers and handlers), which consist of both large and small business. Since the proposed amendments adopted in this final decision would be subject to all the orders' producers and handlers regardless of their size, the provisions are not expected to provide a competitive advantage to any participant. Accordingly, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these adopted proposed amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued January 16, 2004; published January 23, 2004 (69 FR 3278).

Partial Recommended Decision: Issued May 13, 2005; published May 20, 2005 (70 FR 29410).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), at Atlanta, Georgia, on February 23–26, 2004, pursuant to a notice of hearing issued January 16, 2004, and published January 20, 2004 (69 FR 3278).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Department, on May 13, 2005, issued a Partial Recommended Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, conclusions, and rulings of the Partial Recommended Decision are hereby approved and adopted and are set forth in herein. The material issues on the record of the hearing relate to:

1. Merger of the Appalachian and Southeast Marketing Areas.

a. Merging the Appalachian and Southeast milk marketing areas and remaining fund balances.

b. Expansion of the Appalachian marketing area.

c. Transportation credits provisions.

2. Promulgation of a new ''Mississippi Valley'' milk order.

3. Eliminating the simultaneous pooling of the same milk on a Federal milk order and a State-operated milk order that provides for marketwide pooling.

4. Producer-handler provisions.

This partial final decision deals only with Issues 1 through 3. Issue No. 4 will be addressed separately in a forthcoming decision.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Merger of the Appalachian and Southeast Marketing Areas

1a. Merging the Appalachian and Southeast Milk Marketing Areas and Remaining Fund Balances

This decision does not adopt a proposal that would merge the current Appalachian marketing area and Southeast milk marketing area into a single marketing area under a proposed single milk order. Accordingly, a proposal that would combine the fund balances of the current Appalachian and Southeast orders is rendered moot and is not adopted in this final decision.

The Appalachian marketing area consists of the States of North Carolina and South Carolina, parts of eastern Tennessee, Kentucky excluding southwest counties, 7 counties in northwest/central Georgia, 20 counties in southern Indiana, 8 counties and 2 cities in Virginia, and 2 counties in West Virginia. The Southeast order marketing area consists of the entire States of Alabama, Arkansas, Louisiana, Mississippi, Georgia (excluding 7 northern counties), southern Missouri, western/central Tennessee, and southern Kentucky.

A witness testifying on behalf of Southern Marketing Agency, Inc. (SMA), presented testimony in support of Proposals 1 and 2 as contained in the hearing notice published in the **Federal Register** (69 FR 3278). Proposal 1 would merge the current Appalachian and Southeast marketing areas into a single marketing area (hereafter referred to as the proposed merged milk order) and Proposal 2 would combine the remaining balances of funds of the current Appalachian and Southeast orders if the proposed merged order was adopted. According to the witness, SMA is a marketing agency whose cooperative members include Arkansas Dairy Cooperative Association, Inc. (ADCA), Dairy Farmers of America, Inc. (DFA), Dairymen's Marketing Cooperative, Inc. (DMC), Lone Star Milk Producers, Inc. (Lone Star), Maryland & Virginia Milk Producers Cooperative Association, Inc. (MD&VA), and Southeast Milk, Inc. (SMI) (proponent cooperatives).

The witness for the proponent cooperatives said SMA was created in response to a changing market structure and is an extension of the cooperatives' initiative to consolidate and seek enhanced marketing efficiencies. The witness indicated that SMA pools certain costs and returns for its cooperative member producers supplying distributing plants fully regulated under the Appalachian and Southeast milk orders. SMA considers the Appalachian and Southeast orders one market in terms of the distribution of revenues, the allocation and pooling of marketing costs, milk supply and demand, and the development of its annual budget, the witness explained.

The proponent cooperatives' witness stated that the proposed merged milk order would create a milk market which would be commonly supplied and deserving of a common blend price. The witness testified that the continued existence of the separate Appalachian and Southeast Federal milk orders across a functionally single fluid milk marketing area inhibits market efficiency in supplying and balancing the market, creates unjustified blend price differences, encourages uneconomic movements of milk, and results in the inequitable sharing of the Class I proceeds of what should be a single market.

The proponent cooperatives' witness stated that different blend prices and different and separate pool qualification requirements constitute disruptive conditions that would be removed by a merger of the orders. The witness asserted that the proposed merger would allow producer milk to flow more freely between pool plants and provide for the equal sharing of balancing costs across all producers in the proposed merged milk order.

The proponent cooperatives' witness stressed that the adoption of the proposed merged milk order would assure producers that milk would be sold at reasonable minimum prices and producers would share pro rata in the returns from sales of milk including milk not needed for fluid use. The witness further stated that handlers would be assured that competitors would pay a single set of minimum prices for milk set by the established order. The witness stated that a proposed merged milk order is in the public interest because it assures that an adequate supply of high quality milk will be available for consumers.

The proponent cooperatives' witness noted that the adoption of a new Federal order is contingent upon being able to show that interstate commerce occurs in the proposed marketing area. It is the opinion of the witness that ''interstate commerce'' does exist due to the movement of bulk and packaged milk products within, into, and out of the Appalachian and the Southeast marketing areas—the proposed marketing area.

The proponent cooperatives' witness noted a trend of larger geographical areas being served by fewer Federal milk marketing orders. Specifically, the witness said between 1996 and 2003 the number of dairy farmers in the southeastern States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia declined from 11,712 to 7,180. This decrease, the witness explained, parallels the trend of a drop in the number of dairy farmers pooled on the current Appalachian and Southeast orders. The witness stated that based on the final decision for Federal Order Reform (issued March 12, 1999, and published April 2, 1999 (64 FR 16025), 8,180 dairy farmers were expected to pool their milk on the consolidated Appalachian and Southeast orders. However, the witness noted only 7,243 dairy producers supplied milk to the two orders during December 2003.

The proponent cooperatives' witness stressed that there is an acute milk deficit in the Appalachian and Southeast Federal orders. Referencing data obtained from the USDA National Agricultural Statistics Service (NASS) for the States of Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Virginia (southeast region), the witness testified that a decline in dairy farmers led to a decline in milk production in the southeast region. The witness noted milk production decreased from 13,518 million pounds in 1996 to 10,671 million pounds in 2003 a decline of 21 percent. The witness asserted that this decline coupled with an increase in population has resulted in a major expansion of the milkshed for the southeastern region of the United States.

According to the proponent cooperatives' witness, 9,072 million pounds of Class I producer milk was pooled on the combined Appalachian and Southeast orders during 2003. The witness said marketings of milk produced in the southeastern region was 10,671 million pounds in 2003, which means 85 percent of Grade A milk production was needed for Class I use on an annual basis.

In 1996, the proponent witness testified, it was anticipated that 72 fluid milk processing plants were or would become fully regulated distributing plants on the consolidated Appalachian and Southeast orders. However, the witness noted, only 52 remained regulated by the orders during December 2003. The witness indicated that of the fully regulated pool plants existing in both January 1996 and December 2003, more than two-thirds have experienced at least one ownership change and some have experienced several ownership changes.

The proponent cooperatives' witness cited a set of criteria used for consolidation of marketing areas and orders during the reform process. The witness said this list included overlapping route sales and areas of milk supply, the number of handlers within a market, the natural boundaries, the cooperative associations operating in the service area, provisions common to the existing orders, milk utilization in common dairy products, disruptive marketing conditions, and transportation differences.

The proponent cooperatives' witness testified that significant competition for sales between plants exists between the Appalachian and Southeast marketing areas. The witness noted that a ''corridor of competition'' is the shared border of the Appalachian and Southeast. The witness testified that Federal milk order data for 2003 shows Class I disposition on routes inside the Southeast order by Appalachian order pool plants was 11.25 percent of the total Class I route disposition by all plants in the Southeast order. According to the witness, Class I route disposition in the Southeast marketing area by Appalachian order pool plants has increased in total by 11.1 percentage points since January 2000 (*i.e.,* 5.9 percentage points from 2000 to 2001, 2.1 percentage points from 2001 to 2002, and 1.9 percentage points from 2002 to 2003). In addition, the witness stated that record data reveals that Class I route disposition by Appalachian order pool plants into the Southeast marketing area was 63.9 percent of the total Class I disposition by all nonpool plants for the Southeast order during 2003.

According to the proponent cooperatives' witness, all of the distributing plants currently regulated under the Appalachian and Southeast orders are expected to be fully regulated by the proposed merged milk order. Using December 2003 data, the witness stated that the proposed merged milk order would have had a Class I route distribution of 773.4 million pounds. The witness added that 86.58 percent of Class I sales would have been from milk produced in the proposed marketing area. The witness stated that the proposed Southeast marketing area would rank third in the total number of pool plants regulated by a Federal milk order.

The proponent cooperatives' witness stated that there is substantial and significant overlap of the supply of producer milk for the Appalachian and Southeast marketing areas. The witness noted Federal order data for 2000 through 2003 shows that dairy farmers located in southern Indiana, central Kentucky, central Tennessee, central North Carolina, western South Carolina, and central and southern Georgia have supplied milk to plants regulated under Appalachian or Southeast orders. The witness said milk of dairy farmers located in the Central marketing area and Southwest marketing area, and dairy farmers located in northwestern Indiana and south central Pennsylvania, have supplied fluid milk plants regulated by the Appalachian and Southeast orders.

In December 2003, the witness stated, dairy farmers located in 28 states supplied milk to handlers regulated under the Appalachian or Southeast orders. Sixteen of the 28 states supplied milk to both marketing areas and 13 states were located wholly or partially within the proposed merged milk order marketing area, the witness noted.

The witness for the proponent cooperatives testified that the proposed merged milk marketing area and order would rank second in Class I utilization representing 19.5 percent of total Class I sales in all Federal milk orders. Using annual Federal milk order data, the witness noted that for 2003, Class I utilization for the Appalachian and Southeast marketing areas was 70.36 percent and 65.47 percent, respectively. The witness said the combined Class I utilization for the proposed merged milk marketing area would have been 67.77 percent for 2003 or 9,072 million pounds of 13,386 million pounds of producer milk pooled.

The proponent cooperatives' witness noted that milk not needed for fluid uses in the Appalachian marketing area is primarily used in Class II and Class IV while milk not needed for fluid uses in the Southeast marketing area is primarily used in Class III. For 2003, the witness noted that non-fluid milk utilization for the Appalachian order was 14.41 percent Class II, 7.11 percent Class III, and 8.12 percent Class IV, while the non-fluid milk utilization for the Southeast order was 9.97 percent Class II, 17.79 percent Class III, and 6.78 percent Class IV. The witness stressed that these differing uses of milk result in different blend prices between the Appalachian and Southeast orders which leads to disorderly marketing conditions. The witness emphasized that differences in blend prices between the two orders is largely due to significant differences in uses and prices in the manufacturing classes and is not necessarily due to significant differences in Class I milk utilization.

The witness explained that SMA in April 2002 began the common pooling of the costs and returns to supply the customers of member cooperatives in the separate orders in an effort to alleviate disruptive blend price differences. The witness testified that while this procedure has resolved some blend price differences, their procedure does not result in removing inequitable blend prices for all producer milk pooled on the separate orders.

Regarding the commonality of cooperative associations in the two marketing areas, the proponent cooperatives' witness stated that cooperative membership is an indication of market association and provides support for the consolidation of marketing areas. The witness noted that the six SMA member cooperatives accounted for approximately 734 million pounds of producer milk during November 2003, which represents about 67 percent of the total producer milk that would be pooled on the proposed merged milk order. Also, the witness stated these cooperatives market milk of other cooperatives whose member producers' milk would be pooled on the proposed merged milk order. Using November 2003, the witness stated approximately 871 million pounds or 79 percent of the producer milk pooled under the proposed merged milk order would be represented by these proponent cooperatives.

The witness for the proponent cooperatives pointed out that the regulatory provisions of the Appalachian and Southeast orders are similar in most respects except for the qualification standards for producer milk and a producer. While not a Federal milk order regulatory provision, the proponent witness stated that the common handling of costs and returns for milk that would be pooled on the proposed merged milk order recognized similar marketing conditions within the proposed marketing area.

The proponent cooperative witness testified that the proposed merged milk order should retain the Appalachian order pool plant provisions. The witness recommended adopting provisions that would allow the pooling of a supply plant operated by a cooperative association that is located outside the marketing area but within the State of Virginia. The witness stated that the proposed merged milk order should include the Appalachian order ''split'' pool plant provision which would continue to provide for defining that portion of a pool plant designated as a ''nonpool plant'' that is physically separate and operates separately from the pool portion of such plant.

The proponent cooperatives' witness stated that lock-in provisions should be included in the proposed merged milk order. According to the witness,

distributing plants in the Southeastern markets have been ''locked in'' or fully regulated as pool plants under the order in which they are physically located since the mid-1980s. The witness testified that unit pooling distributing plants on the basis of their physical location should be retained in the proposed merged milk order. The witness noted that the Appalachian and Southeast orders currently provide that two or more plants operated by the same handler that are located within the marketing area may qualify for pool status as a unit by meeting the in-area Class I route disposition standards specified for pool distributing plants.

The witness for the proponent cooperatives explained that lock-in provisions help to preserve the viability of capital investments in pool distributing plants. The witness indicated that lock-in provisions in the Southeast and Appalachian orders adequately provide for regulatory stability for pool plants on the edge of a market area that may shift regulatory status between two orders due to changes in route disposition patterns.

The proponent cooperatives' witness recommended changing the ''touch base'' requirement of the producer milk provision from a ''days'' production standard to a ''percentage'' production standard. This change, the witness stated, will accommodate pooling the milk of large producers who ship multiple loads of milk per day. The witness proposed that individual producers deliver 15 percent of their monthly milk production (equivalent to approximately 4.5 days of milk production) to a pool plant during January through June and 33 percent (equivalent to about 10 days of milk production) of their of monthly milk production during the months of July through December. The witness stated that the 33 percent production standard is a reasonable minimum requirement for establishing a producer's association with the market during the short production months of July through December. Under their proposal, the milk of a dairy farmer would be eligible for diversion to a nonpool plant the first day of the month during which the milk of such dairy farmer meets the order's touch base requirements.

The proponent cooperatives' witness indicated that their proposal contains current Southeast order language that limits the total amount of producer milk that may be diverted by a pool plant operator or cooperative association to 33 percent during the months of July through December and 50 percent during January through June.

The proponent cooperatives' witness proposed that the reserve balances of the marketing services, administrative expense, producer-settlement funds, and the transportation credit balancing funds that have accrued in the individual Appalachian and Southeast orders be merged or combined in their entirety if the proposed merged milk order is adopted. The witness explained that the handlers and producers servicing the milk needs of the individual orders would continue to furnish the milk needs of the proposed marketing area.

According to the proponent cooperatives' witness, it would be appropriate to combine the reserve balances of the orders' marketing service funds since marketing service programs for producers would continue under the proposed merged milk order. In regards to the administrative expense funds, the witness stated that it would be equitable and more efficient to combine the remaining administrative funds accumulated under the individual orders. In addition, the witness indicated that this would enable the producer-settlement funds and the transportation credit funds of the proposed merged milk order to continue without interruption.

Witnesses for Maryland & Virginia Milk Producers Cooperative, Inc. (MD&VA), Arkansas Dairy Cooperative, Inc. (ADCA), Lone Star Milk Producers, Inc. (Lone Star), and Dairymen's Marketing Cooperative, Inc. (DMC), testified in support of consolidating the current Appalachian and Southeast milk orders into a single milk order. According to witnesses, MD&VA is comprised of 1,450 to 1,500 dairy farmers, ADCA has 160 member dairy farmers, Lone Star is comprised of about 160 member dairy farmers, and DMC is comprised of 168 member dairy farmers. The witnesses indicated that all of the cooperatives are members of SMA and that the milk of their dairy farmer members is shipped to plants regulated by the Appalachian or Southeast orders.

The MD&VA witness asserted that the consolidation of the current Appalachian and Southeast marketing areas and orders is necessary due to changes in the marketing structure (*i.e.*, milk production and processing sectors) in the southeastern United States. The witness was of the opinion that the area covered by the two current orders is essentially a single market and that all of the producers delivering milk to the market should share a common Federal order blend price.

The witnesses for MD&VA, ADCA, Lone Star, and DMC stated the producer milk requirements under the current Appalachian and Southeast orders make it difficult to ensure the pooling of milk on the orders. The witnesses contended a merger of the Appalachian and Southeast marketing areas and orders would enhance market equity, allow for increased efficiencies in supplying a deficit milk region, and eliminate the disruptive and disorderly marketing conditions that currently exist in the Appalachian and Southeast orders by eliminating blend price differences.

A witness representing Georgia Milk Producers, Inc. (GMP), testified in opposition to the merger as proposed in Proposals 1 and 2. The witness was of the opinion that USDA had made a mistake in 2000 when the western part of the current Southeast marketing area, which had a lower Class I utilization, was added to the Southeast marketing area which had a higher Class I utilization.

Other testimony presented on behalf of GMP, and relying on 1997 data, indicated that milk production in Georgia fell short of Georgia's fluid milk demand by about 122 million pounds as compared to only 4 to 11 million pound supply shortfalls in the other states included in the proposed merged milk order area. The witness stated that the widening supply-demand gap will accelerate as population increases and milk production declines in Georgia. The GMP witness stated that: ''Based on the decline in production in the region compared to the growth in demand, USDA has not sufficiently considered the needs of the dairy farmers in the states covered by the Order.'' According to the witness, GMP dairy farmers have lost income each time the Southeast Federal order has been expanded.

The GMP witness testified that a rejection of the proposed merged milk order together with the creation of a new Mississippi Valley Order, as offered by Proposal 5, would be the first step to help rectify the mistake made in Federal milk order reform. The witness supported raising the utilization in the most deficit areas of the Southeastern States by creating a Mississippi Valley order and combining the high utilization areas of the remainder of the current Southeast order (Order 7) into a new smaller Southeast Order.

The GMP witness asserted that historically, the larger the marketing area, the higher the balancing costs in a deficit market. The witness further asserted that transportation credits shift part of that cost to the entire market rather than to the dairy farmers in the order who are members of cooperatives. The witness testified that transportation credits unintentionally encourage the importation of milk rather than

encourage increased production of local milk.

A witness representing the Kroger Company (Kroger) testified in support of the proposed merger of the Appalachian and Southeast orders. According to the witness, Kroger owns and operates Winchester Farms Dairy, in Winchester, Kentucky, and Westover Dairy, in Lynchburg, Virginia. The witness stated that both plants are pool distributing plants regulated on the Appalachian milk order. The witness stated that Kroger owns and operates Heritage Farms Dairy in Murfreesboro, Tennessee, and Centennial Farms Dairy in Atlanta, Georgia, both fully regulated distributing plants under the Southeast milk order.

According to the Kroger witness, their Winchester, Kentucky, plant was associated with the Ohio Valley order (now part of the Mideast order) from 1982 to 1988, with the Louisville-Lexington-Evansville order from 1988 through 1999, and with the Appalachian order since 2000. The witness indicated that previous decisions by USDA adopted pool plant provisions that allowed their Winchester, Kentucky, plant to be regulated under the Appalachian order. According to the witness, being regulated by the Appalachian order retains that plant's ability to procure milk with a higher blend price when compared with the Mideast order.

The Kroger witness indicated that with the exception of the Murfreesboro, Tennessee, plant, which has a minority supply of milk from independent producers, all of the Kroger pool distributing plants are supplied by Dairy Farmers of America, Inc. The witness indicated that if their Winchester plant were to again be associated with the Mideast order, the returns to the milk supplying cooperative would be reduced due to the lower Mideast order blend price. The witness requested that the current Appalachian order pool plant definition be included in the proposed merged milk order. This request, according to the witness, would permit their plant located in Winchester, Kentucky, to continue its association with the proposed merged milk order rather than with the Mideast order.

A witness representing Dairy Farmers of America, Inc. (DFA), testified that the proponents do not anticipate any difficulties from merging of the two orders or expanding the proposed merged milk order area to include additional Virginia counties. According to the witness, the Virginia State Milk Commission has been able to simultaneously operate a producer base milk pricing program for producers supplying milk to plants with Class I sales within the State. The witness indicated that DFA opposes any change to the proposed merged milk order provisions that may cause conflicts between the operations of the Virginia State Milk Commission and the Federal milk marketing order program.

A witness representing Prairie Farms testified in opposition to Proposals 1 and 2. The witness indicated that the fluid milk industry would be better served by more Federal milk marketing orders covering smaller areas rather than fewer Federal milk marketing orders covering large areas. The witness indicated that Federal milk order reform left ''dead zones'' in the States of Illinois and Missouri, near St. Louis. According to the witness, this area is not able to attract a fluid milk supply and experiences weekly fluid milk deficits.

The Prairie Farms witness indicated that the low per capita milk production in Illinois, in combination with economic incentives to move the milk produced in Illinois and eastern Missouri into the Appalachian and Southeast orders, has caused disorderly marketing conditions. The witness indicated that the blend price differences between the Upper Midwest order and the Central order are not sufficient to cover the transportation cost of moving milk to the ''dead zones''. The witness testified that at an October 31, 2001, meeting, DFA—Prairie Farms' major supplier—indicated that they would no longer be able to provide supplemental milk supplies to Prairie Farms due to the lack of incentives and expenses.

The Prairie Farms witness stated that today's dairy environment shows that the current order system needs to be reconfigured and inequities fixed system-wide. The witness asserted that the consequences for nearby marketing areas and adjacent orders must be considered when revising or merging orders. The witness indicated that market efficiency suffers and difficulties occur in supplying and balancing the market at all Federal milk order borders. The witness indicated that the lines drawn between marketing areas create unjustified blend price differences, encourage uneconomic movements of milk, and result in the inequitable sharing of Class I proceeds.

A witness representing Dean Foods testified in opposition to the proposed merger of the Appalachian and the Southeast market areas. According to the witness, more and smaller order areas create more flexible incentives to deliver milk to Federal order pool plants. According to the witness, relative blend prices determine where milk is shipped and pooled. According to the witness the disincentives associated with increased transportation costs increase faster than the incentives from the higher location value of the merged order blend price. The witness cited the St. Louis/southern Illinois area and its chronic milk deficit as a prime example of these phenomena.

Post-hearing briefs addressing Proposals 1 and 2 were submitted by SMA, Dean Foods, and Prairie Farms. The proponent cooperatives for the proposed merged milk order, submitted a post-hearing brief reiterating their support for the merger of the Appalachian and Southeast orders. The brief described conditions existing in the Appalachian and Southeast orders as disruptive and disorderly, and asserted that these conditions are symptoms of a market that has changed significantly since the orders were promulgated by Federal order reform, effective January 1, 2000.

According to the proponent cooperatives' brief, a merger of the existing orders would bring blend price uniformity, recognize inter-order competition and integrate Class I sales within the proposed merged milk order, recognize common supply areas within the proposed merged milk order, and allow producer milk to move more freely between pool plants within the proposed marketing areas. In addition, proponents contended it would equalize the costs of balancing within the proposed marketing area, erase the artificial line that separates a common milk market, and recognize the common pooling of costs and returns for producer milk within the proposed merged order. The brief asserts that no additional parties would become regulated as a result of the proposed merged milk order. According to the proponent cooperatives' brief, other options that forestall a complete merger are inadequate to correct the present disruptive and disorderly conditions in the separate orders.

Opposition to Proposal 1 was reiterated by Dean Foods and Prairie Farms in a joint post-hearing brief. The brief suggested that blend price differences between orders cause milk to move to where it is most needed. Dean Foods and Prairie Farms stated that without blend price differences milk movements between and within marketing areas are impaired. The opponents brief suggested a national hearing in order to consider simultaneously all marketing regions because the results of one proceeding directly affects other regions. The brief stated that combining the Appalachian

and Southeast marketing areas was considered but was not adopted under Federal milk order reform.

The Dean Foods and Prairie Farms joint brief stated that market administrator data demonstrates that moving milk to where it is needed through blend price differences effectively moves milk from the west to the east for the Southeast marketing area and from north to south for the Appalachian marketing area. The brief offered the St. Louis area as an example of blend price differences that are sometimes too small to cover additional costs of transporting milk to major metropolitan area for fluid use. The brief indicated that similar problems could result elsewhere if the two orders are merged.

In their joint brief, Dean Foods and Prairie Farms suggested that although a majority of dairy market participants may favor a merger, it is important to consider the minority opinion. The brief also requested the inclusion of the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken in the Southeast marketing area if Proposal 1 is denied and Proposal 5 is adopted.

Dean Foods and Prairie Farms' joint brief contended that the proposal to merger the Appalachian and Southeast orders brings forth a significant policy and legal question the Department must address prior to issuing a decision on the merits of the proposal. The proposed merger, if adopted, would cause the number of Federal orders to fall to below the minimum number of 10 required by Congress in the 1996 Farm Bill, they stated.

A written statement submitted on behalf of LuVel Dairy Products, Inc., requested that the administrative requirements of the producer-settlement fund be modified to extend the time period in which payments to the fund are due by one full business day and to allow payments due to the fund to be submitted overnight instead of through the electronic wiring of funds. However, this was not a noticed proposal and no evidence or witness was available to testify regarding this written request.

The 1996 Farm Bill mandated that Federal milk orders be consolidated to not less than 10 or more than 14. The Federal order reform final decision issued March 12, 1999, and published in the **Federal Register** April 2, 1999 (64 FR 16026), meet the requirements set forth in the 1996 Farm Bill through the consolidation of the 31 Federal milk orders into 11 orders. The Agricultural Marketing Agreement Act of 1937 (Act), as amended, provides the Department the authority to issue and amend orders. Accordingly, the merger proposal may be considered by the Department.

A partial recommended decision published in the May 13, 2005, **Federal Register** (70 FR 29410) found that record evidence does not support merging the Southeast and Appalachian marketing areas or substantiate the need for merging these two separate marketing order areas. Record evidence of this proceeding clearly demonstrates that the measure of association between the Appalachian and Southeast marketing areas in terms of overlapping Class I route sales and overlapping milk procurement areas is relatively unchanged since the consolidated orders were implemented in January 2000. The evidence of this record does not indicate that current marketing conditions within the two marketing areas are disorderly.

Southern Marketing Agency, Inc., (SMA) and Dairy Farmers of America, Inc., (DFA) filed comments in response to the partial recommended decision expressing opposition to the Department's denial of the proposed merger. They noted that the proposed merger was supported by a substantial portion of market participants servicing the Class I needs of the market with minimal opposition from milk processing companies. In comments filed by MD&VA and ADCA, the cooperatives maintained their support for the proposed order merger.

In comments and exceptions filed in response to the recommended decision, both SMA and DFA contended that the proposed order merger is needed due to the milk supply relative to the demand for milk southeastern region of the United States. The proponents continue to maintain that the two marketing orders are effectively a single fluid market.

SMA reiterated the need for the merger of the marketing areas and orders stating logistical and marketing efficiency in supplying these deficit markets with supplemental milk is paramount to the area producers, to processors of milk, and ultimately to consumers. SMA contended that the milk deficit condition in the southeast region necessitates the importation of milk from wherever it is available, which currently is the Southwest and Mideast marketing areas. The proponents asserted that daily interplay of the milk supply to the Appalachian and Southeast marketing areas from these outside-area locations demonstrates the absolute need to merge the two orders.

SMA stated that other alternatives to the proposed merger were considered including the merger of the transportation credit funds of the two orders and other amendments to the orders' transportation credit provisions, development of reciprocal producer qualification standards on the two orders, adjustments in the orders' producer milk qualification provisions, and amendments to the orders' pool plant provisions. SMA contended that the proposed merger is the only viable alternative to resolving all the issues in the proposed marketing area.

DFA expressed disappointment at the recommended denial of the proposed merger and stated that the main concern of DFA and other proponent cooperatives is the additional costs associated with serving the market in two marketing areas. According to DFA, the proposed merger is critical because the milk supply relative to demand in the southeastern region grows even more deficit each month. The cooperative stated that servicing a deficit milk market is an extremely expensive proposition and suggested that efforts to reduce marketing costs be given the most serious consideration. DFA contended the proposed order merger would aid the market's suppliers in returning more dollars to dairy farmers.

SMA and DFA contended the partial recommended decision provided no set standards regarding overlapping Class I route disposition and milk procurement areas which the denial of the proposed merger was based. They asked that a standard be identified or developed and communicated to the industry. DFA indicated the partial recommended decision provided references to the 1999 Federal order reform decision that do not explicate the objective basis of that decision but rather simply invokes the decision. DFA insisted the industry would be better served by more transparent decision-making criteria.

As proposed in the partial recommended decision, this decision finds that record evidence does not support merging the Southeast and Appalachian marketing areas. Record evidence of this proceeding does not substantiate the need for merging these two separate marketing order areas. Overlap of Class I route disposition between the two marketing areas is relatively unchanged since the separate orders were created in 2000. The overlap in milk supply areas for plants in the Appalachian and Southeast marketing areas remains minimal and unchanged since 2000. Blend price differences and other marketing conditions in the two marketing areas raised by the proponents are not significantly different from conditions existing in 2000. The proponents have

not demonstrated that the current marketing conditions are disorderly. The proponents have not made a convincing case that the current marketing conditions are disorderly.

The Act provides that milk orders may be issued where the marketing of milk is in the current of interstate or foreign commerce or where it directly burdens, obstructs, or affects interstate or foreign commerce. Federal milk orders define the terms under which handlers in specified markets purchase milk from dairy farmers. The orders are designed to promote the orderly exchange of milk between dairy farmers (producers) and the first buyers (handlers) of milk. As the proponents assert, orders do provide terms and provisions to identify those who are supplying the Class I needs of a market and thus, should share in the order revenues. The record evidence of this proceeding does not support a finding that the current Appalachian and Southeast milk orders are not achieving the goal of orderly marketing.

Proponents in providing justification to merge the Appalachian and Southeast marketing areas and orders advanced a set of criteria that was essentially the same criteria as the criteria the Department used during Federal milk order reform. The criteria included overlapping Class I route sales and overlapping milk procurement areas. As noted in the partial recommended decision, the criteria considered when the current Appalachian and Southeast marketing areas and orders were established as part of Federal milk order reform are considered in this decision. The Department considered and weighed this set of criteria and the supporting justification offered by proponents of the proposed order merger.

In determining whether Federal milk order marketing areas should be merged, the Department generally has considered the extent to which Federal order markets share common characteristics such as overlapping sales and procurement areas, and other commonly shared structural relationships. The most important of these factors are evidence of overlapping sales patterns among handlers of Class I milk and overlapping milk procurement area. In support of the proposed merger, proponents assert that there is substantial overlap in Class I route sales and milk procurement areas between the Appalachian and Southeast markets. However, record evidence of this proceeding clearly demonstrates that the measure of association between these two marketing areas in terms of overlapping Class I route sales and overlapping milk procurement areas is relatively unchanged since the consolidated orders became effective in January 2000.

Several criteria were used by the Department in determining which of the 31 milk order marketing areas exhibited a sufficient measure of association in terms of sales, procurement area, and other structural relationships to warrant consolidation or mandated by the 1996 Farm Bill into the current 10 milk marketing areas. These criteria included overlapping route disposition, overlapping areas of milk supply, number of handlers within a market, natural boundaries, cooperative associations, common regulatory provisions, and milk utilization in common dairy products.

The primary factors during reform that supported the creation of the consolidated Appalachian milk order marketing area and the consolidated Southeast milk order marketing area were overlapping route sales and milk procurement areas between the marketing areas. The determinations were based on an analysis of milk sales and procurement area overlap between the pre-reform orders using 1997 data. Specifically, the Federal order reform final decision issued March 1999 stated that the primary factors for the consolidation of the (1) Tennessee Valley, (2) Louisville-Lexington-Evansville, and the (3) Carolina marketing areas into the current Appalachian milk order marketing area were commonality of overlapping route disposition and milk procurement between the two marketing areas. The decision found that there was ''a stronger relationship between the three marketing areas involved than between any one of them and any other marketing area on the basis of both criteria'' (64 FR 16059).

For the Southeast order, the Federal order reform final decision stated that the basis for the adopted Southeast marketing area which consolidated the former Southeast marketing area with additional counties in Arkansas, Kentucky, and Missouri was ''overlapping route dispositions within the marketing area to a greater extent than with other marketing areas. Procurement of producer milk also overlaps between the states within the market'' (64 FR 16064).

Proposals to merge the Appalachian and Southeast order marketing areas into a single marketing area were considered during the Federal order reform process. Dairy Farmers of America, Inc., and Carolina-Virginia Milk Producers Association submitted comments requesting that the proposed consolidated Appalachian order marketing area and the proposed consolidated Southeast order marketing area be combined into a single consolidated Southeast marketing area. Also, the Kentucky Farm Bureau Federation requested a single Federal order consisting of the proposed consolidated Appalachian and Southeast marketing areas including all of the State of Kentucky.

The proponents for merging the two consolidated marketing areas contended that common procurement areas between the orders would result in different blend prices paid to producers if the orders were not consolidated. The Federal order reform final decision rejected this assertion stating that ''As discussed in the proposed rule, consolidating the Carolina and Tennessee Valley markets with the Southeast does not represent the most appropriate consolidation option because of the minor degree of overlapping route disposition and producer milk between these areas'' (64 FR 16060). Accordingly, the order merger proposals were not adopted during Federal order reform. These findings continue to apply to the current proposed merged order.

Record evidence indicates that the Appalachian and Southeast order marketing areas share minor and unchanged commonality in sources of milk supply, fluid milk route sales, and market participants (cooperative associations and handlers). However, as discussed later in this decision, such measures of association between the Appalachian and Southeast order marketing areas can only support a finding to maintain two separate Federal order marketing areas with some minor modifications.

Overlapping Route Sales and Milk Supply. Current proponents of merging the Appalachian and Southeast marketing areas contend that there is substantial overlap in route sales and milk supply areas. The movements of packaged fluid milk between Federal milk order marketing areas provide evidence that plants from more than one Federal milk order are in competition with each other for fluid milk sales. Overlapping sales patterns that result in the regulatory shifting of handlers between orders tend to cause disorderly marketing conditions by changing the price relationships between competing handlers and neighboring dairy farmers. As discussed later in this decision, there is no evidence of disorder occurring within the Appalachian and Southeast order marketing areas as a result of plants shifting regulation to other orders.

Overlapping milk supply principally applies when the major proportions of a market's milk is supplied by the same area. The cost of a handler's milk is influenced by the location of the milk supply which affects other competitive factors. The common pooling of milk produced within the same procurement area under the same order facilitates the uniform pricing of producer milk among dairy farmers. However, all marketing areas having overlapping procurement areas do not warrant consolidation. An area that supplies a minor proportion of an adjoining area's milk needs from minor proportions of its own total milk supply and has minimal competition among handlers in the adjacent marketing area for fluid sales, supports concluding that the two marketing areas are clearly separate and distinct.

As contained in the partial recommended decision, this decision provides detailed analysis of the association between the Appalachian and Southeast order marketing areas in terms of overlapping Class I route sales and milk procurement areas from 2000 through 2003.

Based on record evidence of Federal milk order data, Table 1 illustrates that the Appalachian and Southeast order marketing areas have experienced no significant change in overlapping Class I route sales or milk procurement since the orders were consolidated.

TABLE 1:—OVERLAPPING ROUTE SALES AND MILK SUPPLY APPALACHIAN (ORDER 5) AND SOUTHEAST (ORDER 7) MILK ORDERS

Date	From order 5 to order 7 (percent)	From order 7 to order 5 (percent)
Route Disposition (Share of Class I Sales)		
Annual Average—2000	11.4	1.9
Annual Average—2001	12.2	2.4
Annual Average—2002	12.2	1.9
Annual Average—2003	12.4	2.0
Overlapping Milk Supply (Share of Total Producer Milk)		
Annual Average—2000	3.1	8.5
Annual Average—2001	3.2	6.9
Annual Average—2002	3.2	6.8
Annual Average—2003	3.2	4.3

Source: Appalachian and Southeast Market Administrator Data.

For the 2000 through 2003 period, route sales by distributing plants regulated by the Appalachian order into the Southeast marketing area averaged about 12 percent, while the route sales from plants regulated by the Southeast order into the Appalachian marketing area averaged about 2 percent. Record data also indicates that the majority of the Class I sales by distributing plants regulated by the Appalachian and Southeast orders is within each of the respective orders. For the 4-year period, Appalachian order handlers accounted for about 75 percent of the total Class I sales within the order's marketing area and plants regulated by the Southeast order accounted for about 85 percent of the order's total Class I sales.

Of the total producer milk pooled on the Appalachian order, the amount of producer milk produced in the Southeast marketing area decreased from 8.5 percent in 2000 to 4.3 percent in 2003. The milk produced in the Appalachian marketing area that was pooled on the Southeast order accounted for about 3.2 percent of the total producer milk pooled on the Appalachian order for the same 4-year period.

In summary, the Table 1 data illustrates that route sales from Appalachian order handlers into the Southeast marketing area increased slightly (1 percentage point) from 2000 to 2003, while route sales from the Southeast order regulated plants into the Appalachian marketing area remained relatively unchanged for the 4-year period. Likewise, the data in Table 1 shows that producer milk pooled on the Appalachian order that originated from the Southeast marketing area declined each year since 2000, while the producer milk pooled on the Southeast order that originated from the Appalachian marketing area has remained unchanged since the orders were consolidated in January 2000.

Table 2, which is based on Federal milk order record data, further details the source of producer milk pooled on the Appalachian and Southeast orders.

TABLE 2.—SOURCE OF PRODUCER MILK FOR THE APPALACHIAN AND SOUTHEAST ORDERS BY ORDER AND UNREGULATED AREAS

Year	Percent from inside order area	Percent from northeast order area	Percent from mideast order area	Percent from southeast order area	Percent from all other orders and unregulated areas
Appalachian Order Producer Milk					
2000	51.9	6.7	9.1	8.5	23.9
2001	47.9	6.9	11.4	6.9	26.8
2002	46.7	7.3	14.6	6.8	24.6
2003	45.1	5.8	19.2	4.3	25.6

Year	Percent from inside order area	Percent from central order area	Percent from southwest order area	Percent from Appalachian order area	Percent from all other orders and unregulated areas
Southeast Order Producer Milk					
2000	66.5	8.9	17.1	3.1	4.4
2001	59.8	9.8	20.1	3.2	7.1
2002	57.0	10.5	21.8	3.2	7.5
2003	58.1	14.2	17.5	3.2	7.1

Source: Appalachian and Southeast Market Administrator Data.

The Table 2 data illustrates that the share of total producer milk pooled on the Appalachian order produced within the marketing area during 2000 through 2003 has declined from about 51 percent to about 45 percent. The amount of producer milk produced in the Southeast marketing area as a share of the total amount of producer milk pooled on the Appalachian order also has declined from 8.5 percent in 2000 to 4.3 percent in 2003. At the same time, the amount of producer milk produced in the Mideast marketing area that was pooled on the Appalachian order increased from 9.1 percent in 2000 to 19.2 percent in 2003.

During 2000 through 2003, the Northeast, Southeast, and Mideast marketing areas accounted for about 27 percent of the total producer milk pooled on the Appalachian order. Of the total producer milk pooled on the Appalachian order that was produced outside the Appalachian marketing area during this period, 12.7 percent was produced in the Southeast marketing area, 12.8 percent in the Northeast marketing area, and 26 percent in the Mideast marketing area. In addition, record data indicates that approximately half of the pooled milk on the Appalachian order is produced in counties within the marketing area and 20 percent to 25 percent of the total pooled milk is supplied by Federally unregulated areas, mainly from counties in the State of Virginia, Pennsylvania, and New York.

For the 4-year period of 2000 through 2003, record data reveals the share of the total Southeast order producer milk produced within the marketing area declined from about 67 percent in 2000 to about 58 percent in 2003. However, this decline was not supplied by producer milk that was produced in the Appalachian marketing area which remained relatively unchanged at about 3 percent from 2000 through 2003. Record data reveals that the supplemental milk for the Southeast order is produced primarily in the Central and Southwest marketing areas. Specifically, the share of producer milk produced in the Central marketing area that was pooled on the Southeast order increased from 8.9 percent in 2000 to 14.2 percent in 2003. In addition, producer milk produced in the Southwest marketing area that was pooled on the Southeast order was about 17 percent in 2000, increased to about 22 percent in 2002, and declined to about 17 percent in 2003.

The record data clearly reveals the degree of overlap in milk supply between the Appalachian and Southeast milk order marketing areas has decreased over the 4-year period since Federal order reform while the degree of overlap between the Appalachian and Mideast orders has increased each year. The data further reveals that the primary out-of-area sources of supplemental milk for the Appalachian order marketing area are the Northeast and Mideast regions. In contrast, the primary out-of-area sources of milk supply for the Southeast order marketing area are the Southwest and Central marketing areas.

Record data reveals that the minimal overlap in milk supply areas that exists between the Appalachian and Southeast milk order marketing areas is primarily concentrated along the Tennessee and Kentucky borders. Such overlap is typical for adjoining marketing areas. The Federal order reform final decision addressed the issue of overlapping milk supply areas among adjacent orders by stating that ''an area that supplies a minor proportion of an adjoining area's milk supply with a minor proportion of its own total milk production while handlers located in the area are engaged in minimal competition with handlers located in the adjoining area likely does not have a strong enough association with the adjoining area to require consolidation. For a number of the consolidated areas it would be very difficult, if not impossible, to find a boundary across which significant quantities of milk are not procured for other marketing areas.'' (64 FR 16045) Accordingly, the overlap existing between the Appalachian and Southeast milk order marketing areas does not warrant an order merger.

Based on the record data, this decision finds that the overlap in route sales and milk procurement areas between the Appalachian and Southeast milk order marketing areas does not support merging the two orders.

Milk Utilization. During 2000 through 2003, the 4-year weighted average Class I utilizations for the Appalachian and Southeast orders were 66.9 percent and 63.1 percent, respectively. The level of Class I utilization is a factor considered in determining whether orders should be merged but does not form the basis for adopting a merger because it is a function of how much milk is pooled on an order.

From 2000 through 2004, the non-Class I use of milk (Class II, Class III, and Class IV) of the Appalachian and Southeast marketing areas has been different. During this 5-year period, Appalachian order Class II, Class III and Class IV utilization rates averaged 14.5 percent, 7.3 percent, and 10.1 percent, respectively. For the same period, the Class II, Class III, and Class IV utilization rates for the Southeast order averaged 10.8 percent, 17.3 percent, and 8.5 percent, respectively. This data illustrates that the Appalachian marketing area is balanced primarily by Class II and Class IV while in the Southeast marketing area is balanced by Class II and Class III.

Blend Prices. Proponent cooperatives contend that the differences in blend prices between the Appalachian and Southeast milk orders result in disruptive marketing conditions. The blend price of an order is a function of the utilization of milk in the respective classes (Class I, Class II, Class III, and Class IV) at the corresponding class prices. The blend prices for the Appalachian and Southeast order have differed due to the orders' different class utilization of milk. The magnitude of the blend price differences is primarily attributed to the differences between the class prices since the Appalachian marketing area is mainly balanced by Class II and Class IV and the Southeast marketing area by Class II and Class III. The blend price difference further illustrates that the Appalachian and

Southeast milk orders have separate and distinct market characteristics.

For the 5-year period of 2000 to 2004, the annual average blend price of the Appalachian order has been higher than that of the Southeast order blend price. This is in part due to the Appalachian order having a greater percentage of milk utilized in Class I compared to the Southeast order over the past five years. The range of the blend price differences for the Appalachian and Southeast orders is mainly due to differences in the Class III and Class IV prices (i.e., the ''balancing'' classes of milk). When the Class III prices goes up relative to the Class IV price, the blend price difference between the two orders narrows due to the predominance of milk utilized in Class III among the non-Class I uses in the Southeast marketing area.

Blend price differences between the Appalachian and Southeast orders have narrowed since the orders were consolidated in 2000. The differences in the weighted average blend prices for the two orders was $0.36 per cwt in 2000, $0.24 per cwt in 2001, $0.21 per cwt in 2002, $0.09 per cwt in 2003, and $0.08 per cwt in 2004. Over the 2000 to 2004 period, the Appalachian order blend price exceeded the Southeast order blend price by an average of $0.20 per cwt.

A 1995 final decision that consolidated five former Southeastern orders (Georgia, Alabama-West Florida, New Orleans-Mississippi, Greater Louisiana, and Central Arkansas) with unregulated counties of four states to form the Southeast order addressed the issue of blend price differences among orders (60 FR 25014). The decision stated that blend price differences between orders may be caused by a number of factors including order provisions, institutional factors, the location of surplus milk and differences in class prices. The decision concluded that the five separate orders were encouraging plants to shift regulation among the orders which resulted in disorderly marketing conditions as producers and handler inequity greatly increased.

The current Southeast and Appalachian orders do not experience disorderly marketing conditions as a result of plants shifting regulation between orders. This may be attributed to the current lock-in and unit pooling provisions contained in the Appalachian and Southeast orders' pooling provisions. The lock-in provisions provide that a plant located within a marketing area that meets the minimum performance standards of the order will be regulated by that order even if the majority of its sales occur in another marketing area. Also, the unit pooling provisions allow two or more plants located in the marketing area and operated by the same handler to qualify for pool status as a unit by meeting the order's total and in-area route disposition standards as if they were a single distributing plant.

A plant shifting regulation to an order with a lower blend price could jeopardize the plant's ability to maintain a milk supply. Current Appalachian and Southeast order provisions allow a plant that meets the performance standards of the order and is physically located within the order marketing area to be regulated by the order even if the majority of its sales are in another marketing area. The provisions were adopted into the southeastern orders and retained in the consolidated Appalachian and Southeast orders to allow plants that are associated with the market and are servicing the market's fluid needs to be regulated under the order in which they are physically located.

If these provisions were not present in the Appalachian and Southeast orders, plants could shift regulation between orders which could cause disorderly marketing conditions to occur. Since record data indicates that the Appalachian and Southeast orders' blend price differences are continuing to decrease and there are provisions that prevent plants from shifting regulation among orders, this decision finds that the blend price differences between the two orders do not form a contributing basis for merging the two marketing areas.

Proponents of the proposed order merger filed comments to the partial recommended decision stating that the decision placed great weight on the fact that no plants have switched regulation between the two orders and implied that such action is a preeminent form of disorderly marketing. Proponents asserted that such an implication misses the complexities of the marketplace. Proponents asserted the two separate Appalachian and Southeast orders result in the improperly sharing of Class I revenues under each of the orders and inefficient milk movements.

The partial recommended decision noted a 1995 decision that concluded that the existence of five separate orders were encouraging plants to shift regulation among the orders which resulted in disorderly marketing conditions. The partial recommended decision indicated that no record evidence revealed marketing disorder in the Appalachian and Southeast marketing areas resulting from the orders provisions, which would support a merger on this basis.

The record provides no specific evidence of inefficient milk movements resulting from the orders' provisions. Also, record evidence reveals no inequitable sharing of the Class I proceeds within each of the marketing areas.

Both the Appalachian and Southeast orders provide discretionary authority to the Market Administrator to adjust certain performance standards, if upon completion of an investigation, the Market Administrator finds that the standards are resulting in inefficient movements of milk, and that a modification of such standards will ensure that the Class I needs of the market are met.

An analysis of the record data reveals that the proposed merger would likely lower the blend price paid to dairy farmers whose milk is pooled on the Appalachian milk order and increase the blend price paid to dairy farmers whose milk is pooled on the Southeast milk order. The gains to Southeast order dairy farmers would be offset by losses to Appalachian order dairy farmers by a similar magnitude.

If the two order marketing areas are merged and assuming no significant depooling in the Federal order system, it is projected that for the period of 2005 through 2009 the blend price paid to dairy farmers whose milk is pooled on the current Appalachian order would be reduced by about $0.07 per cwt on average, while the blend price paid to dairy farmers whose milk is pooled on the current Southeast order would be increased by $0.07 per cwt on average. The $0.07 per cwt decline in the current Appalachian order blend price would cause average order pool receipts to decline by about 11 million pounds and average order pool revenues to fall by $6.6 million. For the current Southeast order, the $0.07 per cwt blend price increase would increase average order pool receipts by an average of 11 million pounds, resulting in an average gross pool revenue increase of $6.5 million per year.

Record testimony by proponent cooperatives indicates that SMA has, through its pooling of costs and returns, reduced their pay price differences to their member producers. Thus, a merger of the Appalachian and Southeast orders would merely increase the blend price for Southeast order nonmember producers while reducing the blend price received by Appalachian order nonmember producers.

Proponents of the proposed merger filed comments contending that the consolidation of the Appalachian and

Southeast marketing areas and orders would result in additional money to dairy farmers in terms of efficiencies in milk movements. The proponents' assertions of market efficiencies arising for the proposed merger are out weighed by the projected negative impact of the order merger on the revenues of Appalachian order nonmember producers, particularly, when the record does not contain any specific evidence of disorder resulting from the provisions of the two orders. In effect, while benefiting certain producers, the proposed merged milk marketing area and order would negatively affect certain other dairy farmers.

Based on this analysis, the absence of disorderly marketing conditions, together with the minimal and unchanged overlap between the Appalachian and Southeast orders in Class I sales and milk procurement area, the two marketing areas and orders should not be merged.

Cooperative Associations. Record evidence clearly demonstrates that there is a strong cooperative association commonality between the Appalachian and Southeast order marketing areas. During December 2003, there were a total of 14 cooperatives marketing the milk of members on the Appalachian and Southeast orders and 9 of these cooperatives marketed milk on both orders. A number of these cooperatives are members of SMA and others cooperatives have the milk of their members that is pooled on the Appalachian and Southeast orders marketed by SMA.

The evidence indicates that proponent cooperatives market the majority of the milk pooled on the Appalachian and Southeast orders. For example, for December 2003, proponent cooperatives marketed 62.23 percent of the total producer milk pooled on the Appalachian order and 69.68 percent of the total producer milk pooled on the Southeast order. While commonality of cooperative associations can be significant, it is not a primary criteria used to determine whether orders should be merged.

The record indicates that the proposed merger could likely provide some administrative relief to SMA in marketing the milk of their cooperative members. However, this outcome is at the expense of independent dairy farmers who are currently associated with the Appalachian order.

Market and Structural Changes. Record evidence indicates that there have been several market and structural changes in the Southeast and Appalachian markets since the Federal Order Reform process began in 1996 and the implementation of the consolidated orders in January 2000. These changes include fewer and larger producers and producer organizations, handler consolidations, and other plant ownership changes.

From January 2000 through December 2003, the number of dairy farmers pooled on the Appalachian and Southeast milk orders decreased. For the Southeast, the decline was 13.2 percent from 4,213 to 3,658, and the number of dairy farmers pooled on the Appalachian order decreased by 15.6 percent from 4,974 to 4,200. Milk production in the Appalachian and Southeast marketing areas has decreased since the Federal orders were consolidated. This decrease in milk production has caused additional supplemental milk to be imported into these deficit milk production markets.

The record reveals that producer organizations associated with the Appalachian and Southeast order marketing areas changed since the Federal order reform process. In 1996, there were 14 cooperative associations marketing the milk of their members on the current Appalachian order and nine Southeast order cooperatives. During December 2003, the number of cooperative associations marketing members' milk on the Appalachian and Southeast orders was 12 and 11, respectively. In 2002, five cooperative associations formed SMA, which markets the majority of the raw milk supplied to plants regulated by the Appalachian and Southeast orders.

The number of pool distributing plants on the Appalachian and Southeast orders for 1996 was 29 and 36, respectively. For December 2003, the number of pool distributing plants for the orders was 24 and 27, respectively. The plant changes that have occurred include ownership changes, new plant openings, as well as plant closings.

Taken singularly or as a whole, the structural changes that have occurred from 1996 to present have had no significant impact on overlapping route disposition and overlapping procurement patterns of the Appalachian and Southeast orders.

Other order provisions. Proponent cooperatives' proposal to combine the balances of the Producer Settlement Funds, the Transportation Credit Balancing Funds, the Administrative Assessment Funds, and the Marketing Service Funds of the Appalachian and Southeast milk orders for the proposed merged milk order is not adopted in this decision. The proposal is moot since this decision does not propose merging the two orders.

Proponent cooperatives offered order provisions for inclusion in the proposed merged milk order. These recommendations included adopting for the proposed merged milk order provisions that currently are included in the Appalachian order and/or the Southeast order. The proponent cooperatives recommended that the proposed merged milk order include pool plant provisions currently in the Appalachian order, and proposed the ''touch-base'' requirement of the producer milk provisions include a ''percentage'' production standard instead of a ''days'' production standard. Since this decision does not adopt the proposal to merge the Appalachian and Southeast marketing areas, the recommendations concerning order provisions for the proposed merged milk order are moot.

The proponent cooperatives requested that the proposed merged milk order contain transportation credit provisions currently applicable to the Appalachian and Southeast milk orders, with certain modifications. The proponent cooperatives requested the transportation credit provisions be modified to increase the maximum rate of assessment to $0.10 per cwt, change the months a producer's milk is not allowed to be associated with the market for such producer to be eligible for transportation credits, and provide the Market Administrator the authority to adjust the 50-percent production eligibility standard. They also supported the proposed changes for the individual orders if their order merger proposal was not adopted.

Proponent cooperatives contended that by adopting transportation credits provisions of the Appalachian and Southeast orders the Department established the inextricable and common supply relationship between the orders. The proponents state that the proposed order merger simply extends that recognition to provide common uniform prices and terms of trade for all dairy farmers delivering milk to the market, and a common set of producer qualification requirements.

This decision finds that the inclusion of transportation credit provisions of the Appalachian and Southeast orders is not a basis for merging the two orders. Such provisions were incorporated and established in the orders based on the prevailing marketing conditions in each individual order marketing area.

Record indicates that the orders' transportation credit balancing funds have functioned differently since 2000 with respect to the assessment rates at which handlers made payments and the payments from the orders'

transportation credit balancing funds. The Appalachian order waived the collection of assessments at least two months of each year from 2001 through 2003. The Southeast order, while collecting assessments at the maximum rate of $0.07 per cwt, has prorated payments from the transportation credit balancing fund each year since 2001.

In exceptions to the partial recommended, SMA contends that the record is replete of evidence of disorder with respect to the payouts under the Appalachian and Southeast orders' transportation credit provisions. This decision finds that the different levels of payouts of transportation credits under the orders do not substantiate the need to merge the two orders. The payments from the orders' transportation credit balancing funds and the assessment rates at which handlers made payments are reflective of the prevailing marketing conditions in the individual markets.

As discussed later, proposed amendments to the transportation credit provisions of the Appalachian and Southeast orders are adopted in this decision. The proposed amendments are warranted due to the declining milk production within the Appalachian and Southeast marketing areas and the anticipated growing need of importing milk produced outside the marketing areas to supply the fluid needs of the markets.

1b. Expansion of the Appalachian Marketing Area

While the proposal for merging the Appalachian and Southeast milk marketing areas is not adopted, this decision would expand the current boundaries of the Appalachian milk marketing area to include certain unregulated counties and cities in the State of Virginia. (The partial recommended decision inadvertently noted ''14'' unregulated cities verses ''15'' and excluded the city of Waynesboro, which is located in Augusta County, Virginia, from the list of proposed cities.)

Expansion of the marketing area adjoining the Appalachian marketing area was contained in the proposal published in the hearing notice as Proposal 3. The proposal would have expanded the proposed merged milk order marketing area to include 25 currently unregulated counties and 15 currently unregulated cities in the State of Virginia. Similarly, a proposal published in the notice of hearing as Proposal 4 sought the expansion of the marketing area by adding an area adjoining the Appalachian marketing area that includes two unregulated cities and two unregulated counties in State of Virginia. Proposal 3, which also was supported by proponents of Proposal 4, is adopted.

Proponent cooperatives of Proposal 3 offered that the merger of the Appalachian and Southeast marketing areas be expanded to include the Virginia counties of Allegheny, Amherst, Augusta, Bathe, Bedford, Bland, Botetourt, Campbell, Carroll, Craig, Floyd, Franklin, Giles, Grayson, Henry, Highland, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Smyth, and Wythe) and Virginia cities of Bedford, Buena Vista, Clinton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Radford, Roanoke, Salem, Staunton, and Waynesboro.

The proponent cooperatives' witness testified that the addition of the 25 counties and the 15 cities would properly change the regulatory status of a Dean Foods' Morningstar Foods plant located at Mount Crawford, Virginia, from the Northeast order to the Appalachian order. Also, the witness stated the proposed expansion would have the effect of fully and continuously regulating under the Appalachian order two fluid milk distributing plants (the Kroger Company's Westover Dairy plant, located in Lynchburg, Virginia, and the National Dairy Holdings' Valley Rich Dairy plant, located in Roanoke, Virginia) under the proposed merger.

The witness said the Dean Foods Company's Mount Crawford plant alternates between partially regulated and fully regulated status under the Northeast milk order. According to the witness, in order for the plant to procure an adequate supply of milk, producers delivering to it must receive a blend price comparable with the blend price generated under the proposed merged milk order, if adopted.

The proponent cooperatives' witness stated that the milk supply located near Dean Foods' Mount Crawford, Virginia, plant is an attractive source of supply for plants that are fully regulated by the Appalachian order that are located in southern Virginia, North Carolina, South Carolina, and eastern Tennessee. The witness indicated that the impact of this proposal on the Virginia State Milk Commission and Virginia base-holder producers would be insignificant. The witness was of the opinion that, if there were any impact on Virginia base-holders producers, it would be positive—reflecting the higher blend price at Mount Crawford, Virginia, for the plants under the proposed merged milk order versus the Northeast order.

The proponent cooperatives submitted a post-hearing brief supporting the expansion of the proposed merged milk order area to include the additional 25 counties and 15 cities in Virginia.

A witness representing the Kroger Company (Kroger) testified in support of Proposal 4 to expand the proposed merged milk order to include two currently unregulated counties (Campbell and Pittsylvania), and two currently unregulated cities (Lynchburg and Danville) in the State of Virginia. The witness stated that Kroger owns and operates four pool distributing plants associated with the Southeast and Appalachian milk orders, including Westover Dairy located in Lynchburg, Virginia. The witness also testified in support of adopting the current Appalachian order pool plant definition.

According to the Kroger witness, the Appalachian order pool distributing plant provisions require that at least 25 percent of a plant's total route disposition must be to outlets within the marketing area. This requirement, explained the witness, has restricted Kroger's ability to expand its Class I sales into areas outside the Appalachian marketing area, including the area directly associated with the plant's physical location (Lynchburg, Virginia).

The Kroger witness noted that Westover Dairy has been a fully regulated plant on the Appalachian order since January 2000, and prior to reform, the plant was regulated on the Carolina order—one of the former orders combined to form the Appalachian order. According to the Kroger witness, the total in-area route disposition standard increased from 15 percent to 25 percent when the consolidated and reformed Appalachian order became effective in January 2000. This change, the witness contended, has created an undue hardship on Westover Dairy and has forced it to relinquish sales in areas outside of the Appalachian market to maintain its pool status under the order. The witness concluded by stating that Kroger prefers Proposal 3—the larger expansion—which would not only expand the order area to include their plant located at Lynchburg, Virginia, but would allow a further expansion of Class I sales into other surrounding areas.

The witnesses for MD&VA, ADCA, Lone Star, and DMC testified in support of Proposal 3 to expand the proposed Southeast milk order area to include certain unregulated counties and cities in the State of Virginia as proposed by the proponent cooperatives. The witnesses stated that the cooperatives were not opposed to the expansion of the proposed Southeast milk marketing

area into the smaller territory in the State of Virginia as proposed by Kroger but stated the larger expanded area in Proposal 3 was preferable.

The MD&VA witness explained that some of its member producers are located in the proposed expanded area and that the cooperative delivers the milk of producers holding Virginia Milk Commission base to plants fully regulated under the Appalachian milk order. According to the witness, the milk of MD&VA member producers is marketed to Dean Foods' Morningstar Foods plant located in Mount Crawford, Virginia, which would become a pool distributing plant if the proposed merged milk order and the expansion to Virginia counties and cities are adopted.

Witness appearing on behalf of Dean Foods and Prairie Farms stated they were not opposed to Proposals 3 and 4. Thus, there was no opposition expressed at the hearing or in post-hearing briefs to the adoption of these proposals.

In response to the partial recommended decision, Kroger, Dairy Farmers of America, Inc. (DFA), MD&VA, and ADCA filed comments in support of expanding the Appalachian marketing area to include certain unregulated counties and cities in the State of Virginia. Kroger stated the proposed expansion is supported by the hearing record. According to DFA, the current Appalachian order configuration makes it difficult for plants to establish supply patterns and pricing terms since the potential exists for plants to shift their regulatory status from month to month. Thus, DFA asserted the proposed expansion is beneficial because it will assure full and regular pool plant status for the affected bottling plants.

MD&VA and ADCA asserted that the proposed expansion of the Appalachian marketing area will enhance producer and handler equity, provide for orderly marketing, and improve marketing efficiencies. Under the current Appalachian order, MD&VA and ADCA noted that the Kroger's Westover Dairy plant, located in Lynchburg, Virginia, has limited expansion of sales area to preserve its regulatory status as a pool distribution plant on the order. The cooperatives stated the proposed marketing area expansion will allow the plant to operate more efficiently, perpetuate the plant's regulatory status as a pool plant, and eliminate the disorder that could occur if the plant's regulatory status changes.

According to MD&VA and ADCA, the Dean Foods' Morningstar Foods plant, located in Mount Crawford, Virginia, has been plagued with issues of regulatory status. MD&VA and ADCA asserted that the proposed expansion should correct actual and perceived handler inequities between partially regulated and fully regulated handlers that result from different blend prices, and bring forth order and stability in the marketing area. The cooperatives explained that the continual shifting of regulatory status between, or in and out of a Federal milk order is disorderly. They stated the proposed expansion will remove the disorder associated with the plant's continuous change in regulatory status.

This decision adopts proposed amendments to the Appalachian order that would expand the marketing area to include 25 currently unregulated counties and 15 cities in the State of Virginia. The proposed amendments would cause the full and regular regulation under the Appalachian order of three fluid milk distributing plants—one of which has been shifting regulatory status under the Northeast order—provided the plants meet the order's minimum performance standard. The plants are located in Lynchburg, Virginia, Roanoke, Virginia, and Mount Crawford, Virginia. Because of Appalachian order's lock-in provision, these plants, which would be physically located within the Appalachian marketing area, would continue to be regulated under the Appalachian order even if the majority of their sales are in another Federal order marketing area.

The proposed expansion would continue the regulation of two fluid milk distributing plants (Kroger's Westover Dairy plant, Lynchburg, Virginia, and National Dairy Holdings' Valley Rich Dairy plant, Roanoke, Virginia) under the Appalachian order. The proposed expansion also would shift the regulation of the Dean Foods' Morningstar Foods plant, Mount Crawford, Virginia, from the Northeast order to the Appalachian order.

The Kroger's Westover Dairy plant has been regulated by the Appalachian order since the order was consolidated in January 2000. Current Appalachian order pool plant provisions require that at least 25 percent of a distributing plant's total Class I sales be to outlets within the marketing area. Prior to the reform of Federal milk orders, the former order marketing areas that were combined into the Appalachian order marketing area contained a 15 percent in-area route disposition standard for pool distributing plants.

Record evidence indicates that the current in-area Class I route sales standard likely is limiting the growth potential of Kroger's Westover Dairy plant, located in Lynchburg, Virginia. It is not the intent of Federal milk orders to inhibit the growth of handlers. Federal orders are designed to provide for the orderly exchange of milk from the dairy farmer to the first buyer (handler). The orders also provide minimum performance standards to ensure that the fluid needs of the market are satisfied. Accordingly, the adoption of the expansion proposal would allow the Kroger Westover Dairy plant to maintain a milk supply in competition with nearby Appalachian order plants, and eliminate any disorder that is resulting from current Appalachian order provisions.

In the case of Dean Foods' Morningstar Foods plant in Mount Crawford, Virginia, the proposed amendments would eliminate the current disruption and disorder caused by the plant shifting its regulatory status from fully to partially regulated status under the Northeast order. Such shifting from fully to partially regulated status under an order may cause financial harm to producers supplying. The proposed expansion should result in more order and stability in the marketing area.

The record indicates that the Kroger's Westover Dairy plant and Dean Foods' Morningstar plant are supplied by producers located near the plants and that the plants compete with other Appalachian order plants in milk procurement. This decision finds that orderly market conditions would be preserved by the adoption of the proposed expansion amendments. The regulation of no other plants should be affected by the adoption of these proposed amendments. In addition, the proposed expansion of the Appalachian marketing area is not expected to have a negative impact on the blend price paid to producers.

If the proposed marketing area expansion for the Appalachian order becomes effective, milk originating from any of the 25 counties or 15 cities in the State of Virginia would not be eligible to receive transportation credits under the Appalachian and Southeast orders.

1c. Transportation Credits Provisions

As proposed in the partial recommended decision, this decision finds that the maximum rates of the transportation credit assessment for the Appalachian and Southeast orders should each be increased by 3 cents per hundredweight. Increasing the transportation assessment rates will tend to minimize the exhaustion of the *transportation credit balancing fund* when the need for importing supplemental bulk milk from outside of the marketing areas to meet Class I

needs occurs. Additionally, this decision provides the Market Administrators of the orders the discretionary authority to increase or decrease the 50 percent production standard for determining the milk of a dairy farmer that is eligible for transportation credits. Such dairy farmer should not have been a producer under the order during more than two of the immediately preceding months of February through May for the milk of the dairy farmer to be eligible for receipt of a transportation credit.

The Appalachian and Southeast orders each contain a transportation credit balancing fund from which a payment is made to partially offset the cost of moving milk into each marketing area to meet fluid milk demands. The fund is the mechanism by which handlers deposit, on a monthly basis, payments at specified rates for eventual payout as defined by a specified formula. The orders' transportation credit provisions provide payments typically during the short production months of July through December to handlers who incur hauling costs importing supplemental milk to meet the fluid demands of the market.

Transportation credit payments are restricted to bulk milk received from plants regulated by other Federal orders or shipped directly from farms of dairy farmers located outside the marketing areas and who are not regularly associated with the market. The handler payments into the funds are applicable to the Class I milk of producers who supply the market throughout the year. The Market Administrators of the orders are authorized to adjust payments to and from the relevant *transportation credit balancing fund.*

The transportation credit provisions of the Appalachian and Southeast orders differ by the assessment rate at which handlers make payments to the *transportation credit balancing fund.* The maximum rate of assessment for the Appalachian order is $0.065 per cwt while the maximum rate of assessment for the Southeast order is $0.07 per cwt.

A feature of the proposal for merging the Appalachian and Southeast marketing areas and orders was providing for a maximum transportation assessment rate of 10 cents for the proposed Southeast order. This would essentially represent a 3-cent per cwt increase from the current Southeast order, and a 3.5-cent increase from the Appalachian order. While there was no separate proposal for increasing the assessment rate for the transportation credit fund, it was made clear by the proponents that in the absence of adopting the proposed merger an increase in the transportation credit assessment rate was warranted and supported for the current orders.

With regard to the transportation credit issue, the proponent cooperatives' witness testified that the maximum transportation credit assessment rate should be increased to $0.10 per cwt. According to the witness, the increase is necessary to eliminate insufficient funding for transportation credit claims that would likely have been paid had sufficient funds been available. According to the witness, the transportation credit rate of $0.07 per cwt for the current Southeast order has been at the maximum rate since the inception of the order, but that payments from the transportation credit balancing fund were exhausted in 2001, 2002, and 2003 resulting in prorating dollars from the *transportation credit balancing fund* to the amount of transportation claims submitted for receipt of the credit. In contrast, the witness noted, the transportation credit fund for the Appalachian order has been sufficiently funded since 2000 thus enabling the payment of all claims.

The proponent cooperatives' witness was of the opinion that the exhaustion of transportation credit funding in the Southeast order resulted in inequitable supplemental milk costs to handlers between the two orders. The witness testified that handlers procuring supplemental milk supplies for the Appalachian order were reimbursed at 100 percent of their claimed credits while handlers procuring supplemental milk supplies for the Southeast order were reimbursed at approximately 50 percent of their claimed credits. According to the witness, the unequal payout between the two orders results in disorderly marketing conditions exhibited by inequitable costs for producer milk among handlers.

Dean Foods and Prairie Farms voiced opposition to the proponents' proposed amendments to increase the maximum rate of assessments and increase the amount of milk that would be eligible of for transportation credits. Dean Foods and Prairie Farms pointed out that the proposals to incorporate transportation credit provisions into the southeastern orders were strongly opposed by some fluid milk processors and some dairy farmers. They noted that the intent and purpose of transportation credit provisions were to only pay a portion of the cost associated with hauling supplemental milk to the markets to meet fluid needs.

In their post-hearing brief, Dean Foods and Prairie Farms stated there is no reason to increase the rate of assessment. Changing the rate of assessment, they contended, would effectively change the system of pricing without considering the impact on other marketing orders.

In opposition to any change in the rate of transportation credits, a witness for Georgia Milk Producers, Inc. (GMP), testified that increasing the assessment rate would generate more revenue to be paid to truck drivers instead of paying higher prices to local dairy farmers. According to the witness, the price of milk paid to local dairy farmers should be increased rather than subsidizing additional outlays for transportation costs.

The GMP witness suggested that instead of increasing the transportation credit assessment rate, a financial incentive should be initiated for dairy farmers to encourage milk production during the fall months when fluid milk demands are highest. According to the witness, if the incentive plan still does not cover the local milk production deficits, only then should the assessment rate for transportation credits be increased. The witness was of the opinion that an incentive plan encouraging local milk production would reduce hauling costs because less milk would be imported into the Southeast market. The witness also was of the opinion that a financial incentive plan would lower balancing costs by encouraging the movement of milk supplies located near processing plants.

Three comments were filed in support of the proposed amendments to the transportation credit provisions as contained in the partial recommended decision.

Dairy Farmers of America, Inc. (DFA), supported the decision to increase by 3 cents per cwt the maximum transportation credit assessment rates to fund the existing transportation credit funds of the Appalachian and Southeast orders. According to DFA, costs are exceeding the reimbursement as provided by the transportation credits due to declining milk production in the southeastern region and increasing costs of procuring and transporting supplemental milk supplies. DFA asserted that the increase in the orders' maximum assessment rates will provide additional money to offset costs and allow processors and consumers to bear an increased share of the market supply cost.

MD&VA and ADCA expressed support for the proposed amendments to the transportation credit provision of the Appalachian and Southeast orders. Specifically, the cooperative associations support increasing the maximum assessment rates under both orders by 3 cents per cwt, and proposed

amendments that provide the Market Administrator of each of the orders the discretionary authority to set the milk production standard for determining which producer milk meets the performance standard.

MD&VA and ADCA stated the current maximum rates provided in the individual orders are insufficient to cover transportation credit claims. The cooperatives noted that the Market Administrators for the Appalachian and Southeast orders prorated payments during several months of the 2004 payout period. MD&VA and ADCA stated the record indicates that milk production continues the declining trend while Class I sales is projected to increase. The increase in the maximum assessment rate for the Appalachian and Southeast orders is necessary to correct shortages and lessen handler inequities, the cooperatives asserted. They maintained that insufficiency in the funds has worsened and created an increased burden on the marketers of raw milk to find other ways to help cover the costs associated with the transport of milk.

MD&VA and ADCA expressed support for greater Market Administrator discretion in setting limits and minimum performance standards in Federal Orders. The cooperative indicated that defining under the order what milk is ''supplemental milk'' by limiting the portion of milk pooled from a dairy farmer in the spring months is a prime example of an Order provision which needs flexibility. They asserted that overly rigid provisions in the Appalachian and Southeast areas can cause inefficiencies in the marketing of milk, disorderly marketing, or uneconomic movements of milk.

MD&VA explained that unexpected declines in milk production in the spring months may signal the need for additional shipments of milk into the order areas over historic levels. In such a case, the cooperatives indicated that it is highly desirable for the Market Administrator to have discretionary authority to adjust the delivery standard. The order requirement that prior to making any change in the provision a Market Administrator must seek views, data and argument from the industry assures openness in decision-making, inclusiveness, and fairness, the cooperatives asserted.

Current Appalachian and Southeast order transportation credit provisions have been a feature of the orders, or predecessor orders, since 1996. The need for transportation credits arose from the consistent need to import milk from many areas outside of these marketing areas during certain months of the year when milk production in the areas is not sufficient to meet Class I demands. The transportation credit provisions provide payments to handlers and cooperative associations in their capacity as handlers to cover some of the costs of importing supplemental milk supplies into the Appalachian and Southeast marketing areas during the short production months of July through December. The provisions also are designed to limit the ability of producers who are not normally pooled on these orders from pooling their milk on the Appalachian and Southeast orders during the flush production months when such milk is not needed to supply fluid needs.

While Federal milk order reform made modifications to certain features of the transportation credit fund provisions of the Appalachian and Southeast orders, the maximum assessment rate at which payments are collected was not modified. The current maximum rate of $0.065 per cwt for the Appalachian order has been sufficient to meet most of the claims made by handlers applying for transportation credit. The record reveals that since implementation of milk order reform in January 2000, the Market Administrator for the Appalachian order waived assessing handlers in at least two months of each year from 2001 through 2003.

For the current Southeast order, the current maximum transportation credit rate of $0.07 per cwt has not been sufficient to cover hauling cost claims by handlers. As a result, the Market Administrator of the Southeast order has prorated payments from the *transportation credit balancing fund* since 2001.

Even though this decision does not adopt the merger of the current Southeast and Appalachian marketing areas, the fundamental purpose of the transportation credit fund provisions of the orders are strongly supported by the proponent cooperatives. This support is independent of providing for a new and larger Southeast milk marketing order.

An increase in the maximum transportation credit assessment rate for the Appalachian and Southeast orders is warranted on the basis of declining milk production within the Appalachian and Southeast marketing areas. For example, the final decision of Federal milk order reform anticipated that about two-thirds of the milk supply for the Appalachian order would be produced within the marketing area, with supplemental milk supplies from unregulated areas to the north in Virginia and Pennsylvania (based on 1997 data). Since implementation of Federal order reform in January 2000, record evidence reveals that only 50 percent of the Appalachian milk supply is produced within the marketing area. The trend of lower in-area milk production strongly suggests that the anticipated future needs of relying on milk supplies from outside the marketing area will only grow and that steps should be taken to assure a continuing adequate supply of milk for handlers servicing the marketing area. An increase in the Appalachian order maximum transportation credit assessment rate is a means of assuring and adequate milk supply for fluid use for the area. The Southeast marketing area exhibits the same trend.

To the extent that assessments are not needed to meet expected transportation credit claims, this decision adopts provisions that provide discretionary authority to the Market Administrator to set the assessment rate at a level deemed sufficient or to waive assessments. Additionally, the transportation credit provisions of the Appalachian and Southeast orders prevent the accumulation of funds beyond actual handler claims. In this regard, increasing the transportation credit rate will not result in an unwarranted accumulation of funds beyond what is needed to pay handler claims.

As part of the proposed merged marketing areas and orders, the proponent cooperatives' witness proposed that any producer that is located outside of the marketing area would be eligible for transportation credits if that producer did not pool more than 50 percent of the producer's own milk production during the months of March and April. The witness testified that the Market Administrator should also be given the discretionary authority to adjust the 50 percent limit based on the prevailing supply and demand conditions for milk in the area.

The current transportation credit provisions of the Appalachian and Southeast orders specify that transportation credits will apply to the milk of a dairy farmer who was not a ''producer'' under the order during more than 2 of the immediately preceding months of February through May, and not more than 50 percent of the production of the dairy farmer during those two months, in aggregate, was received as producer milk under the orders during those two months. These provisions provide the basis for determining the milk of a dairy farmer that is truly supplemental to the market's fluid needs. The provision specifies the months of February through May—the period when milk production is greatest—as the months

used to determine the eligibility of a producer whose milk is needed on the market.

The Market Administrators of the orders should be given discretionary authority to adjust the 50 percent eligibility standard for producer milk receiving transportation credits based on the prevailing marketing conditions within the marketing area. The Market Administrator should have the authority to increase or decrease this requirement because it is consistent with authorities already provided for supply plant performance standards and diversion limit standards. Accordingly, the proposed change to the transportation credit provisions of the Appalachian and Southeast orders is recommended for adoption.

This decision does not recommend changing the period the milk of a dairy farmer is not allowed to be associated with the market for such dairy farmer's milk to be eligible for transportation credits. If the months were modified from February through May to March and April, the definition of supplemental milk under the transportation credit provisions would effectively change. Supplemental milk for purposes of determining the eligibility of transportation credits is that milk that is not regularly associated with the market. The proposed change would allow supplemental milk to be delivered to a pool plant all twelve months, potentially lowering the uniform price during those high production months by pooling additional milk when is not needed for fluid use.

By retaining the months of February through May and allowing the Market Administrators of the Appalachian and Southeast orders to adjust the 50 percent production standard, the current definition of supplemental milk remains intact. The orders' Market Administrator would be allowed to increase or decrease the 50 percent production standard, if warranted, based on current marketing conditions.

2. Promulgation of a New ''Mississippi Valley'' Milk Order

A proposal, published in the hearing notice as Proposal 5, seeking to split from the current Southeast marketing area and forming a new Mississippi Valley milk marketing area and order was not proposed for adoption in the partial recommended decision and is not adopted in this final decision.

A witness appearing on behalf of Dean Foods and Prairie Farms testified in support of Proposal 5. In splitting the current Southeast marketing area, a new marketing area, to be named the Mississippi Valley order, would include the area of the existing Southeast marketing area west of the Alabama-Mississippi borderline including the States of Mississippi, Louisiana, Arkansas. According to the witness, this new marketing area would extend northward through the relevant portions of Tennessee and Kentucky, and would include southern Missouri. The second order, according to the witness, would consist of the remainder of the current Southeast marketing area, i.e., Georgia, a portion of the western panhandle of Florida, and Alabama.

The Dean Foods-Prairie Farms witness, and others supporting the adoption of Proposal 5, asserted that increasing the number of Federal milk marketing areas and orders would provide the economic incentives for more efficient movement of milk and increase the blend price received by producers who supply the needs of the Class I market. According to the witnesses, splitting the Southeast order into two orders would reduce transportation costs and improve the efficient operation of the transportation credit balancing fund in each proposed new marketing area by more efficiently attracting milk to the Class I market and decreasing the need for hauling milk from longer distances.

The Dean Foods-Prairie Farms witness testified that there are two major incentives to ship milk to distributing plants—the blend price paid by pool distributing plants and the blend price paid for diverted milk. According to the witness, there are two disincentives to ship milk to a pool distributing plant under any order—the net transportation cost of shipping milk and the alternative blend prices in other markets that may attract milk to plants in those other markets. The witnesses cited milk deficit areas in southern Illinois and St. Louis, Missouri, as examples of areas where, in the opinion of the witnesses, blend price differences result in a failure to attract enough milk to adequately serve the Class I market. The witness asserted that the establishment of a Mississippi Valley order would likely result in blend price differences between the new areas which would provide producers the economic incentives of receiving higher blend prices while incurring lower transportation costs.

The Dean Foods-Prairie Farms witness testified that a national hearing may be justified to more fully consider the border, pricing, and milk deficit issues and alternatives to proposals (like Proposals 1 and 5) advanced to merge or to split the Southeast marketing area. According to the witness, when marketing area borders are changed, such change affects all marketing areas in the Federal order milk order system. The witness was of the opinion that considering border issues would necessarily require a broad rethinking of the marketing areas of the entire Federal order program and that a national hearing may be the most appropriate venue to consider these affects.

A witness for GMP testified that the expansions of the Southeast marketing area prior to Federal milk order reform, and as a result of Federal order reform, have successively reduced income to Georgia producers. The witness explained that the expansions of the marketing area have discouraged local milk production and encouraged movements of milk from outside the marketing area. According to the witness, the declining ability of local production to meet the Class I needs of the market, and the increased balancing requirements of an expanded marketing area, have increased costs while reducing revenues to Georgia dairy farmers.

In the opinion of the GMP witness, the establishment of a separate Mississippi Valley marketing area and order and a smaller Southeast marketing area would have positive benefits for Georgia milk producers. The witness explained that as a smaller Southeast marketing area, the Georgia market would likely experience lower balancing costs and expanded local production to meet the growing Class I needs of the market.

A witness for proponents of Proposal 1 testified in opposition to adopting a new Mississippi Valley marketing area by splitting it from the current Southeast marketing area. According to the witness, the proposed new marketing area would not lead to lower transportation costs but instead may lead to increased administrative difficulties with transportation credit balancing funds. The witness was of the opinion that blend price enhancement for the proposed smaller Southeast marketing area would be achieved at the expense of producers pooled on the proposed new Mississippi Valley order.

The opposition witness was of the opinion that blend prices for the proposed smaller Southeast marketing area may increase to levels that would exacerbate differences between the blend prices of the new smaller Southeast and the Appalachian order and may give rise to unintended market disruptions. The witness was of the opinion that a smaller Southeast marketing area and order also may result in administrative difficulties in the operation of transportation credit

balancing funds among the three orders and may lead to the inefficient movements of milk. The witness expressed the opinion that splitting the Southeast marketing area would not address the concerns that proponents of Proposal 1 have raised regarding overlapping sales and inefficient milk movement issues between the Appalachian and Southeast marketing areas. The witness indicated that these issues would remain unresolved if the Southeast marketing area was split and if the Southeast and Appalachian marketing areas were not merged.

A post hearing brief by the proponents of Proposal 5 reiterated their position that creating more, rather than fewer, blend price differences will provide incentives to ship milk to markets where the milk is demanded. In addition, the brief reiterated that splitting the Southeast marketing area will reduce transportation costs and result in more efficient movement of milk in a smaller Southeast marketing area and a Mississippi Valley marketing area. The brief also called for the including the Kentucky counties of Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Marshall, and McCracken into the smaller Southeast order if Proposal 5 is adopted.

Southern Marketing Agency, Inc., and Dairy Farmers of America, Inc. (DFA), filed comments to the partial recommended decision supporting the denial of the proposed split of the Southeast order marketing area. DFA stated that for proponents of the proposed order merger adoption of Proposal 5 would have exacerbated their milk supply issues—made it more expensive to service the markets—and would have been of no corresponding benefit to milk suppliers.

The proposal to split the current Southeast marketing area hinges on the assertions that geographically smaller marketing areas tend to reduce transportation and balancing costs and increase blend prices for pooled producers in each of the newly defined marketing areas. The record does not contain specific evidence to support these conclusions. The record lacks evidence to support concluding that the adoption of Proposal 5 would lower transportation costs, increase local milk production, and reduce balancing costs. The same is true for concluding that local milk production would be encouraged and increased to the extent that transportation expenses, and the need for continued transportation credit fund payments, would be significantly reduced while bringing forth a sufficient supply of milk to meet the Class I needs of the proposed marketing areas.

Opponents of Proposal 5 argued that blend price increases from splitting the Southeast marketing area may not occur and that lower transportation cost may not be realized.

This decision does not adopt Proposal 5. The record is insufficient in demonstrating the marketing efficiencies advanced by the proponents.

3. Eliminating the Simultaneous Pooling of the Same Milk on a Federal Milk Order and a State-Operated Milk Order That Provides for Marketwide Pooling

A proposal, published in the hearing notice as Proposal 6, seeking to prohibit the simultaneous pooling of the same milk on the Appalachian or Southeast milk marketing orders and on a State-operated order that provides for the marketwide pooling of milk is adopted in this partial final decision. Currently, neither the Appalachian or Southeast orders have a provision that would prevent the simultaneous pooling of the same milk on the order and on a State-operated order that provides for marketwide pooling.

The proponents of Proposal 6, Deans Foods and Prairie Farms testified that the simultaneous pooling of milk on more than one marketing order was prohibited between all Federal milk orders. According to the Dean Food-Prairie Farms' witnesses, a loophole was inadvertently created during the consolidation of Federal orders permitting double pooling of the same milk on a Federal milk marketing order and on a State-operated order that, like a Federal order, provides for the marketwide pooling of producer milk. (The double pooling of milk has become known as ''double dipping.'')

According to the Dean Foods/Prairie Farms'' witnesses, this loophole has been exploited for financial gain by some parties at the expense of pooled producers in other Federal orders until prohibited by subsequent milk order amendments. The proponents testified that proposals similar to Proposal 6 have been adopted in the Upper Midwest, Pacific Northwest, and Central Federal milk orders.

Proponents testified that prohibition of double dipping in the Southeast and Appalachian orders would close a potential loophole in these orders or in a successor order if these orders were merged. The witnesses testified that the pooling of milk regulated by Virginia and Pennsylvania milk programs would not be affected by the prohibition of double pooling. According to the witnesses, milk that is pooled on these State milk programs does not receive extraordinary benefits that would have an impact on Federal milk order pools. No opposition testimony was presented.

Dairy Farmers of America, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc. (MD&VA), and Arkansas Dairy Cooperative Association, Inc. (ADCA), filed comments to the partial recommended decision supporting findings to eliminate the simultaneous pooling of the same milk on the Appalachian and Southeast milk order and a State-operated order that provides marketwide pooling.

MD&VA and ADCA noted that the hearing record indicates that the Virginia State Milk Commission does not operate a producer revenue pool. Accordingly, the cooperatives asserted, the proposed amendments that would eliminate the pooling of milk under the Appalachian or Southeast orders of a dairy farmer that shares simultaneously in the revenues of a State-operated marketwide pool must not pertain to Virginia Milk Commission Base-holder dairy farmers.

According to MD&VA and ADCA, the ability for milk to be simultaneously pooled on a State-operated marketwide pool and a Federal order pool violates the premises established for the pooling of milk. The cooperatives stated milk may serve one market only at a time, and thus, must not be allowed to be pooled on multiple pools at one time. They noted that recommended and final decisions for other orders rightfully implemented amendments to prohibit the simultaneously pooling of milk on multiple orders, and assert that the Appalachian and Southeast orders should be amended likewise.

Since the 1960s the Federal milk order program has recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and some handlers receive unfair competitive advantages. The need to prevent ''double pooling'' became critically important as distribution areas expanded, orders merged, and a national pricing system was adopted. Milk already pooled under a State-operated program and able to simultaneously be pooled under a Federal order creates the same undesirable outcomes that allowing milk to be pooled on two Federal orders used to cause and subsequently corrected.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for

the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the provision in the State pool that excludes milk from the State pool when the same milk is already pooled under a Federal order. Other States with marketwide pooling similarly do not allow double-pooling of Federal order milk.

The record supports that the Appalachian, Southeast, and possible successor orders should be amended to preclude the ability to simultaneously pool the same milk on the order if the milk is already pooled on a State-operated order that provides for marketwide pooling. Although no record evidence was presented illustrating or documenting current double pooling of milk in the Appalachian and Southeast orders, the adoption of Proposal 6 offers a reasonable solution for prohibiting the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate simultaneously in more than one Federal order pool.

Evidence presented at the hearing establishes that milk that can be pooled simultaneously on a State-operated order and a Federal order would render the Appalachian and Southeast milk orders unable to establish prices that are uniform to producers and to handlers. This shortcoming of the pooling provisions allows milk which was pooled on a State order to be pooled milk on a Federal order. Such milk therefore could not provide a reasonable or consistent service to meet the needs of the Class I market because it was committed to the State order.

Adoption of Proposal 6 will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Appalachian and Southeast markets' Class I needs. Accordingly, Proposal 6 is included as part of this partial final decision.

4. Producer-Handler Provisions

Proposals considered at the hearing regarding the regulatory status of producer-handlers will be addressed in a separate decision.

Dairy Farmers of America, Inc. (DFA), filed a comment response to the partial recommended decision expressing disappointment in the lack of decision regarding the producer-handler issue and expects a decision on these provisions to be issued soon.

As stated previously in this decision, Issue No. 4 regarding the producer-handler provisions of the Appalachian and Southeast orders will be addressed separately in a forthcoming decision.

Requests for Expedited Issuance of Final Decision

Comments submitted by Dairy Farmers of America, Inc., Maryland and Virginia Milk Producers Cooperative Association, Inc. (MD&VA), Arkansas Dairy Cooperative Association, Inc. (ADCA), and Southern Marketing Agency, Inc. (SMA), in response to the partial recommended decision requested the expedited issuance of a final decision on proposed amendments contained in the partial recommended decision.

Conforming Change

This decision amends the Appalachian and Southeast orders to appropriately reference the Deputy Administrator of Dairy Programs to reflect changes in a position and program name within the Agricultural Marketing Service.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, the marketing agreements upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order for Appalachian marketing area, and hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof are two documents, a Marketing Agreement regulating the handling of milk, and an Order amending the order regulating the handling of milk in the Appalachian and Southeast marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and the two documents annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

June 2005 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, and Southeast marketing areas is approved or favored by producers, as defined under the terms of the orders (as amended and as hereby proposed to be amended), who during

such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

Dated: September 15, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Appalachian and Southeast Marketing Areas

(This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) Findings. A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to Section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held; and

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and orders amending each of the specified orders contained in the Recommended Decision issued by the Administrator, Agricultural Marketing Service, on May 13, 2005, and published in the **Federal Register** on May 20, 2005 (70 FR 29410), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

1. The authority citation for 7 CFR part 1005 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 1005.2 is amended by revising the Virginia counties and cities to read as follows:

§ 1005.2 Appalachian marketing area.

* * * * *

Virginia Counties and Cities

Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Buchanan, Campbell, Carroll, Craig, Dickenson, Floyd, Franklin, Giles, Grayson, Henry, Highland, Lee, Montgomery, Patrick, Pittsylvania, Pulaski, Roanoke, Rockbridge, Rockingham, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe; and the cities of Bedford, Bristol, Buena Vista, Clifton Forge, Covington, Danville, Galax, Harrisonburg, Lexington, Lynchburg, Martinsville, Norton, Radford, Roanoke, Salem, Staunton, and Waynesboro.

* * * * *

3. Section 1005.13 is amended by revising the introductory text and adding a new paragraph (e) to read as follows:

§ 1005.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

§ 1005.81 [Amended]

4. In § 1005.81(a), remove ''$0.065'' and add, in its place, ''$0.095''.

§ 1005.82 [Amended]

5. In § 1005.82, paragraph (b) is amended by removing the words ''Director of the Dairy Division'' and adding, in their place, the words ''Deputy Administrator of Dairy Programs'' and adding a new paragraph (c)(2)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(c) * * *

(2) * * *

(iv) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(ii) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

6. The authority citation for part 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

7. Section 1007.13 is amended by revising the introductory text and adding a new paragraph (e) to read as follows:

§ 1007.13 Producer milk.

Except as provided for in paragraph (e) of this section, *Producer milk* means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

* * * * *

(e) Producer milk shall not include milk of a producer that is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program imposed under the authority of a State government maintaining marketwide pooling of returns.

* * * * *

§ 1007.81 [Amended]

8. In § 1007.81(a), remove ''$0.07'' and add, in its place, ''$0.10''.

§ 1007.82 [Amended]

9. In § 1007.82, paragraph (b) is amended by removing the words ''Director of the Dairy Division'' and adding, in their place, the words ''Deputy Administrator of Dairy Programs'' and adding a new paragraph (c)(2)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(c) * * *

(2) * * *

(iv) The market administrator may increase or decrease the milk production standard specified in paragraph (c)(2)(ii) of this section if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

* * * * *

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to, all inclusive, of the order regulating the handling of milk in the (_____Name of order_____) marketing area (7 CFR PART _____[2]) which is annexed hereto; and

II. The following provisions:

§ _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____[3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 05–18758 Filed 9–20–05; 8:45 am]

BILLING CODE 3410–02–P

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

Federal Register

Wednesday,
September 21, 2005

Part III

Environmental Protection Agency

40 CFR Part 82

Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7971–6]

RIN 2060–AK45

Protection of Stratospheric Ozone: Adjusting Allowances for Class I Substances for Export to Article 5 Countries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's action proposes adjustments to allocations of Article 5 allowances that permit production of Class I ozone depleting substances (ODSs) solely for export to developing countries to meet those countries' basic domestic needs. Today's action proposes adjustments to the baseline Article 5 allowances for companies for specific Class I controlled substances and establishes a schedule for reductions in the Article 5 allowances for these Class I controlled substances in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) and the Clean Air Act (CAA). Today's proposal also would extend the allocation of Article 5 allowances for the manufacture of methyl bromide solely for export to developing countries beyond January 1, 2005, in accordance with the Montreal Protocol and the CAA.

DATES: Written comments on this proposed rule must be received on or before November 21, 2005. If a public hearing takes place, it will be scheduled for October 6, 2005. Any party requesting a public hearing must notify the contact person listed below by 5pm Eastern Standard Time on September 28, 2005. After that time, interested parties may call EPA's Stratospheric Ozone Protection Information Hotline at 1–800–296–1996 for information on whether a hearing will be held, as well as the time and place of such a hearing.

ADDRESSES: Submit your comments, identified by Regional Material in EDOCKET (RME) ID No. OAR–2005–0151, by one of the following methods:

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

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: *A-and-R-docket@epa.gov.*

4. Fax: 202–343–2338, Attn: Hodayah Finman.

5. Mail: ''OAR–2005–0151'', Air Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

6. Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to OAR–2005–0151. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and should be free of any defects or viruses.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Hodayah Finman by telephone at (202) 343–9246, or by e-mail at *finman.hodayah@epa.gov*, or by mail at Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Overnight or courier deliveries should be sent to 1310 L Street, NW., Washington, DC 20005. You may also visit the Ozone Depletion Web site of EPA's Global Programs Division at *http://www.epa.gov/ozone/index.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other topics.

SUPPLEMENTARY INFORMATION: Today's action proposes to establish a new Article 5 allowance baseline for specified Class I substances, establish a schedule for phased reductions in such allowances, and extend the time allowed for Article 5 production for methyl bromide.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this action are those associated with the production and export of Class I ODSs. Potentially regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers and Exporters of Class I ODSs.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. To determine whether your facility, company, business, organization is regulated by this action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Docket. EPA has established an official public docket for this action under the Office of Air and Radiation Docket & Information Center, Electronic Docket ID No. OAR–2005–0151. 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 EPA West, 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460, Phone: (202)–566–1742, Fax: (202)–566–1741. The materials may be inspected from 8:30 a.m. until 4:30 p.m. Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying docket materials.

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 access documents in the public docket that are available electronically. Once in the system, select ''search,'' then type in the appropriate docket identification 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. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility.

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 identification 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 plan to submit late comments, please also notify Hodayah Finman, U.S. Environmental Protection Agency, Stratospheric Protection Division (mail code 6205J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 343–9246.

Information designated as CBI under 40 CFR part 2, subpart 2, must be sent directly to the contact person for this notice. However, the Agency requests that all respondents submit a non-confidential version of their comments to the docket as well.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case 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.

The electronic public docket is EPA's preferred method for receiving comments. Go directly to EPA dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments.

2. By Mail. Send two copies of your comments to: Air and Radiation Docket (6102), Docket No. OAR–2005–0151, U.S. Environmental Protection Agency, Mailcode 6205J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

3. By Hand Delivery or Courier. Deliver your comments to: 1310 L Street NW., Washington, DC 20005, Attention: Docket ID No. OAR–2005–0151. Such deliveries are only accepted during the Docket's normal hours of operation as identified under **ADDRESSES**.

4. By Facsimile. Fax your comments to: (202) 566–1741, Attention: Docket ID No. OAR–2005–0151.

D. How Should I Submit Confidential Business Information (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. Send or deliver information identified as CBI only to the mail or courier addresses listed above, as appropriate, to the attention of Docket ID No. OAR–2005–0151. 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 identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone depleting substances can be found at 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 21, 1988. Congress then enacted, and President Bush signed into law, the Clean Air Act Amendments of 1990 (CAA of 1990), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. chapter 85, subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since.

The requirements contained in the final rules published in the **Federal Register** on December 20, 1994 (59 FR 65478) and May 10, 1995 (60 FR 24970) establish an Allowance Program. The Allowance Program and its history are described in the notice of proposed rulemaking published in the **Federal Register** on November 10, 1994 (59 FR 56276). The control and the phaseout of the production and consumption of Class I ODSs as required under the Protocol and the CAA are accomplished through the Allowance Program.

In developing the Allowance Program, we collected information on the amounts of ODSs produced, imported, exported, transformed and destroyed within the U.S. for specific baseline years for specific chemicals. This information was used to establish the U.S. production and consumption ceilings for these chemicals. The data were also used to assign company-specific production and import rights to companies that were in most cases producing or importing during the specific year of data collection. These production or import rights are called ''allowances.'' Due to the complete phaseout of many ODSs, the quantities of allowances granted to companies for those chemicals were gradually reduced and eventually eliminated. Production allowances and consumption allowances no longer exist for any Class I ODSs. All production or consumption of Class I controlled substances is prohibited under the Protocol and the CAA, except for a few narrow exemptions.

In the context of the regulatory program, the use of the term ''consumption'' may be misleading. Consumption does not mean the ''use'' of a controlled substance, but rather is defined as the formula: production + imports − exports, of controlled substances (Article 1 of the Protocol and section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under these regulations except where the regulations include explicit use restrictions. Use of such substances may be subject to other regulatory limitations.

The specific names and chemical formulas for the Class I ODSs are in appendix A and appendix F in subpart A of 40 CFR part 82. The specific names and chemical formulas for the Class II ODSs are in appendix B and appendix F in subpart A.

Although the regulations phased out the production and consumption of Class I controlled substances, a very limited number of exemptions exist, consistent with U.S. obligations under the Protocol. The regulations allow for the manufacture of phased-out Class I controlled substances, provided the substances are either transformed or destroyed. They also allow limited manufacture if the substances are (1) exported to countries operating under Article 5 of the Protocol or (2) produced for essential or critical uses as authorized by the Protocol and the regulations. Limited exceptions to the ban on the import of phased-out Class I controlled substances also exist if the substances are: (1) Previously used, (2) imported for essential or critical uses as authorized by the Protocol and the regulations, (3) imported for destruction or transformation only, or (4) a transhipment or a heel (a small amount of controlled substance remaining in a container after discharge) (40 CFR 82.4).

III. How Did the Beijing Amendments to the Montreal Protocol Change the Levels and Schedules of ODS Production To Meet the Basic Domestic Needs of Developing Countries?

Under the Montreal Protocol, industrialized countries and developing countries have differentiated schedules for phasing out the production and import of ODSs. Developing countries operating under Article 5, paragraph 1

of the Protocol in most cases have substantial additional time in which to phase out ODSs. The Parties to the Protocol recognized that it would be inadvisable for developing countries to spend their scarce resources to build new ODS manufacturing facilities to meet their basic domestic needs as industrialized countries phase out. The Parties therefore decided to permit a small amount of production in industrialized countries, above and beyond the amounts permitted under those countries' phaseout schedules, to meet the basic domestic needs of developing countries.

The original Montreal Protocol schedule for industrialized country production of ODSs to meet the basic domestic needs of developing countries was based on a percentage of each producing country's baseline. The initial level was set at 10 percent of the baseline and this level changed to 15 percent upon phaseout of each specific ODS or group of chemicals (see section IV). Current EPA regulations reflect this approach.

The adjustments to the Montreal Protocol adopted by the Parties at their 11th meeting in Beijing change the basis for calculating production by industrialized countries to meet the basic domestic needs of developing countries for specific ODSs or groups of ODSs. Instead of being calculated as a percentage of total production of the ODS in a given year, the new baselines for basic domestic need production are calculated based on the average quantity of the ODS exported to Article 5 countries over a specified range of years. The new baseline calculation agreed to in Beijing reflects the Parties' concern, which EPA shares, that global oversupply of certain Class I ODSs is interfering with the transition to alternatives. The oversupply of these ODSs results in low prices that make it difficult for non-ozone depleting alternatives to compete in the marketplace. Businesses and individuals thus lack an economic incentive to transition to alternatives. The new baseline calculation is designed to overcome this problem with respect to Article 5 countries by reducing supply to those countries. The price of these ODSs should rise to reflect the decrease in supply.

The adjustments agreed to in Beijing also establish reduction schedules for the manufacture of ODSs by industrialized countries to meet the basic domestic needs of developing countries. Article 5 countries are subject to periodic step-downs in the amount of ODSs they may consume. If industrialized countries' production for export to Article 5 countries were not adjusted to take into account these step-downs, the problem of oversupply likely would recur. Therefore, the Parties agreed at Beijing to reduction schedules that would mirror each step-down in Article 5 consumption. The schedules also reflect the complete consumption phaseouts in Article 5 countries. Under these schedules, industrialized countries must cease production for export to developing countries of CFCs by January 1, 2010, and of methyl bromide by January 1, 2015.

To ensure consistency with the Montreal Protocol, EPA is proposing to adopt new baselines and reduction schedules at 40 CFR part 82, subpart A. Under this proposed rule, the amount of ODSs that could be produced to meet the basic domestic needs of developing countries would be reduced by a certain percentage of the baseline in accordance with the step-down schedule for Article 5 developing countries for those chemicals until they are completely phased out.

The details of the new baselines and reduction schedules agreed to in Beijing, as well as updated baselines proposed by EPA, are in the sections below. EPA is also removing obsolete provisions from the regulations at 682.4(h) to increase the clarity of the regulations.

IV. How Do EPA's Regulations Permit Additional Production for Export to Article 5 Countries?

Section 604(e) of the Clean Air Act allows EPA to authorize, through rulemaking, limited production of Class I ODSs for export to developing countries, for the purpose of satisfying their basic domestic needs. The limits on such production must be no less stringent than the Protocol. With respect to the Class I ODSs specifically listed in the Act, EPA may not authorize an amount of production greater than 15 percent of baseline, and the exception must terminate no later than January 1, 2010, or, in the case of methyl chloroform, 2012. Production of methyl bromide for export to developing countries is addressed separately in section 604(e)(3). The CAA does not contain a specific cap or termination year for production of methyl bromide for this purpose. Consistent with section 604(e) of the CAA, EPA created a category of allowances called ''Article 5 Allowances'' in § 82.9 of the regulations to permit limited production of Class I ODSs explicitly for export to developing countries. Based on the original Protocol agreement regarding production to meet the basic domestic needs of Article 5 countries, each U.S. producer of an ODS is granted Article 5 allowances equal to an additional specified percentage of its baseline production allowances as listed in § 82.5. This quantity of additional production is permitted solely for export to Article 5 countries.

Today's proposed action would ensure that EPA's regulations concerning Article 5 allowances continue to be no less stringent than the Protocol, as required by the CAA. Section 614 of the Clean Air Act states that the Act shall ''be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, * * * and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of [Title VI of the Act] and any provision of the Montreal Protocol, the more stringent provision shall govern.'' In accordance with section 614, today's proposed action would ensure full implementation of the Montreal Protocol's limitations on production for export to Article 5 countries and, in the case of the baseline for CFCs, would impose more stringent limitations based on more recent information than that available to the Parties in Beijing. Today's proposal would also ensure consistency with the termination date for Article 5 allowances in section 604(e), by specifying that holders of baseline Article 5 allowances for production of CFCs will receive zero percent of their baseline beginning January 1, 2010. In addition, as discussed below, today's proposed action would ensure that Article 5 allowances for production of CFCs prior to that date would not exceed the maximum level of 15 percent of baseline specified in the Act.

V. What Is the New Calculation of Baselines of Article 5 Allowances?

Pursuant to the Beijing Amendments of the Montreal Protocol and section 604(e) of the CAA, this rule proposes to adjust the calculation of the baseline of Article 5 allowances for some of the Class I ODSs. The Parties considered but decided not to change the basic domestic needs baselines for carbon tetrachloride and methyl chloroform (Group IV and Group V controlled substances, respectively) at the meeting in Beijing; thus the current regulatory baselines for these substances remain consistent with Protocol requirements. EPA believes that there is no need, at this time, to propose a change to the baselines for carbon tetrachloride and methyl chloroform, since these substances are exported primarily for

use as a feedstock in the manufacture of other substances, and are thus transformed. While the Parties did adopt new, more stringent baselines for Group II substances (halons), Article 5 allowances for these substances ceased to be available in the U.S. as of January 1, 2003. Accordingly, this proposed rule does not address those substances.

Thus EPA is proposing to change the existing regulations only with respect to CFCs (Groups I and III) and methyl bromide (Group VI). The Protocol contains a formula for calculating the new Article 5 allowance baselines for each of these Class I controlled substances. The Protocol also contains a range of years to be used for the calculation of each baseline as articulated in Articles 2A, 2C, and 2H. At the time of the meeting in Beijing (1999), the years chosen for establishing new baselines for production to meet Article 5 countries' basic domestic needs were the years of most recent and complete historical available data to the Parties for the particular group of ODSs.

For CFCs, EPA is proposing to amend the phaseout regulations to make the new baselines for Article 5 allowances reflect more recent historical data for exports to Article 5 countries. For methyl bromide, EPA is proposing to amend the phaseout regulations to reflect the new baselines for Article 5 allowances specified in Article 2H of the Protocol. With respect to CFCs, EPA considered granting allowances to companies exporting CFCs to Article 5 countries based on an average of data from the range of years specified in Articles 2A and 2C of the Protocol. The Agency is seeking comment on the use of these time periods to calculate the baseline. However, EPA prefers a more stringent approach. The presence of only minor price fluctuations for CFCs in recent years suggests that there is no shortage of CFCs in Article 5 countries (see p. 33 of Technology and Economic Assessment Panel (TEAP) Task Force Report on Basic Domestic Needs—October 2004). In addition, the October 2004 TEAP report says, ''* * * in 2002 no deficit of CFCs were reported in any Article 5(1) country'' (p. 24, para. (a)) and ''there has been no sign of any shortage [of CFCs] in any Article 5(1) country (even during 2004)'' (p. 24, para. (d)). Thus it appears that current supplies are adequate. In addition, the U.S. has not historically been a major supplier of CFCs to developing countries. EPA's tracking database shows that the U.S. supply of CFCs has been significantly lower than the TEAP report indicates. To view the aggregate data on CFC supply and production by the U.S., visit EDOCKET OAR–2005–0151. Also, the ability to reuse and recycle CFCs taken out of refrigeration products provides an additional source of supply should demand for CFCs exceed expectations.

With respect to methyl bromide, the phaseout is in an earlier stage and the adequacy of supply is less certain. The U.S. provides a large percentage of the supply of methyl bromide to developing countries. As a result, decreasing the U.S. baseline could have a substantial effect on the amount of supply potentially available to those countries. Therefore, EPA is not proposing a more stringent baseline for methyl bromide.

Each substance or group of substances has its own formula for calculating the new baseline as described below. The new baselines for each company would be specified in § 82.11.

A. CFCs Subject to Earliest Controls

As discussed above, under the current regulations Article 5 allowances are currently calculated as a percentage of the original production baseline. Section 601(2) of the CAA and EPA's implementing regulations at 40 CFR 82.5 establish the year 1986 as the production baseline for Class I, Group I substances. Under the current § 82.9, every person apportioned baseline production allowances for Group I CFCs received Article 5 allowances equal to 10 percent of their 1986 baseline for each control period ending before January 1, 1996 (the phaseout date), and 15 percent of their baseline for each control period thereafter.

As a result of the Beijing Amendment to the Protocol, Article 2A, paragraphs 4–7 state that an industrialized Party's allowable production of CFCs 11, 12, 113, 114, and 115 to meet the basic domestic needs of Article 5 Parties shall be measured against ''the annual average of its production of [these substances] for basic domestic needs for the period 1995 to 1997 inclusive.'' However, EPA has more recent historical data on CFC exports to developing countries over the period 2000–2003 that show much lower levels being exported to Article 5 countries.

Using the recent data on exports of CFCs from the U.S. to developing countries, specifically for the years 2000–2003, EPA is proposing a new baseline of Article 5 allowances which would be less than one percent (< 1%) of the 1986 production allowance baseline for CFCs. The proposed new baseline for Article 5 allowances for Group I CFCs therefore meets the requirement in section 604(e)(2)(B) of the CAA to limit Article 5 allowances to no more than 15 percent of the 1986 production baseline. Since the purpose of adjusting the Article 5 allowance baselines is to avoid oversupply of CFCs in Article 5 countries, EPA is proposing to establish the new baselines for Article 5 allowances based on this more recent historical data. These new baselines should be a more accurate starting point for the reduction schedule specified in the Protocol.

B. Other Fully Halogenated CFCs

As discussed above, under the current regulations Article 5 allowances are calculated as a percentage of the original production baseline. Section 601(2) of the CAA and EPA's implementing regulations at 40 CFR 82.5 establish the year 1989 as the production baseline for Class I, Group III substances. Under the current § 82.9, every person apportioned baseline production allowances for Group III CFCs received Article 5 allowances equal to 10 percent of their 1989 baseline for each control period ending before January 1, 1996 (the phaseout date), and 15 percent of their baseline for each control period thereafter.

As a result of the Beijing Amendment to the Protocol, Article 2C, paragraphs 3–4 state that an industrialized Party's allowable production of other fully halogenated CFCs to meet the basic domestic needs of Article 5 Parties shall be measured against ''the annual average of its production of [these substances] for basic domestic needs for the period 1998–2000 inclusive.'' However, EPA has more recent historical data on exports of CFCs to developing countries over the period 2000–2003 that show much lower levels of CFC being exported to Article 5 countries.

Since there was no export of Class I, Group III substances during the 2000–2003 period being proposed as the basis for calculating new allocations of Article 5 allowances, today's proposal would establish a new baseline of zero. Since the purpose of adjusting the Article 5 allowance baselines is to reduce the amount of CFCs globally, and more recent data should provide a more accurate starting point for the reduction schedule, EPA is proposing to establish the new baselines for Article 5 allowances based on this more recent historical data.

C. Methyl Bromide

As discussed above, under the current regulations Article 5 allowances are calculated as a percentage of the original production baseline. Section 601(2) of the CAA and EPA's implementing regulations at 40 CFR 82.5 establish the year 1991 as the production baseline for Class I, Group VI substances (methyl

bromide). Under the current § 82.9, every person apportioned baseline production allowances for Group VI substances received Article 5 allowances equal to 15 percent of their 1991 baseline for each control period ending before January 1, 2005 (the phaseout date). There is currently no regulatory framework in place to allow for the production of methyl bromide for export to developing countries past the phaseout date. Section VII of this proposed rulemaking proposes to amend the current regulations to allow for exempted production of methyl bromide for export to Article 5 countries past January 1, 2005 in accordance with section 604(e)(3) of the CAA.

As a result of the Beijing Amendment to the Protocol, paragraphs 5–5 bis of Article 2H stipulate that an industrialized Party's allowable production of methyl bromide to meet the basic domestic needs of Article 5 Parties shall be measured against ''the annual average of its production of [methyl bromide] for basic domestic needs for the period 1995 to 1998 inclusive.'' EPA is therefore proposing to establish the average of each company's production exported to Article 5 countries for the years 1995–1998 as the new Article 5 allowance baseline for methyl bromide.

VI. What Is EPA's Proposed Schedule To Reflect the Beijing Amendment for Phased Reductions of Article 5 Allowances?

Today's proposed action would establish a schedule for phased reductions in the manufacture of certain Class I ODSs to meet the basic domestic needs of Article 5 countries in accordance with the adjustments to the Protocol agreed to in Beijing. For each control period specified in the table in § 82.11, EPA proposes to grant each U.S. company the specified percentage of the baseline Article 5 allowances apportioned to it under § 82.11.

The idea of reduction schedules for the manufacture of ODSs to meet basic domestic needs of developing countries is new to the Protocol and to U.S. regulations. While the CAA does not require a reduction schedule, such a schedule is a reasonable means of assuring that production of Class I substances for this purpose will terminate in accordance with the deadlines provided in the Act and in the Protocol. In addition, the CAA does not allow EPA to authorize Article 5 allowances in a manner inconsistent with the Protocol. Thus, today's action proposes to freeze and gradually phase out the production of ODSs in the United States to meet the basic domestic needs of Article 5 parties in line with the Protocol's phase down schedules for consumption in Article 5 countries. So, every time the developing countries have a step down in the percentage of their consumption for a Class I ODS, the allowable production in the United States to meet those countries' basic domestic needs will mirror that step down. For instance, in 2005, developing countries operating under Article 5(1) must reduce their consumption of CFCs by 50 percent of their baseline; therefore, the amount of Article 5 allowances for producing CFCs to meet those countries' basic domestic needs is also reduced by 50 percent.

A. CFCs Subject to Earliest Controls

In the Montreal Protocol, Article 2A, paragraphs 5–8 set forth the reduction schedule for the production of CFCs 11, 12, 113, 114, and 115 for basic domestic needs of Article 5 countries. EPA is proposing to incorporate this reduction schedule into the phaseout regulations. Hence, the Article 5 allowance reduction schedule for production of the Class I, Group I controlled substances would be as follows: 50% of the Article 5 allowance baseline for the 2006 control period; 15% of baseline for each of the control periods from January 1, 2007, to December 31, 2009; and 0% (complete phaseout) for the control periods beginning January 1, 2010, and thereafter.

B. Other Fully Halogenated CFCs

Paragraphs 3–5 of Article 2C of the Montreal Protocol establish the reduction schedule for the production of other fully halogenated CFCs (the Class I, Group III controlled substances) to meet the basic domestic needs of Article 5 countries. If EPA were to set a baseline other than zero for these CFCs, the reduction schedule for their production would be: 80% of baseline for the 2006 control period; 15% of baseline for each of the control periods from January 1, 2007 to December 31, 2009; and 0% (complete phaseout) for the control periods beginning January 1, 2010 and thereafter. However, EPA's preferred option is to set a zero baseline based on 2000–2003 data, which would make a reduction schedule unnecessary.

C. Methyl Bromide

Article 2H, paragraphs 5 bis. and 5 ter. of the Montreal Protocol set forth the reduction schedule for production of methyl bromide to meet the basic domestic needs of Article 5 countries. EPA is proposing to incorporate this reduction schedule into the phaseout regulations. The reduction schedule for the production of methyl bromide (Class I, Group VI controlled substances) would be as follows: 80% of the Article 5 allowance baseline for each of the control periods from January 1, 2006 to December 31, 2014; 0% (complete phaseout) starting January 1, 2015 and thereafter.

VII. What Is the New Timeline for Article 5 Production of Methyl Bromide?

The current regulations have no provision that allows for exempted production of methyl bromide for export to Article 5 countries past January 1, 2005. This rule proposes to create a new basis for exempted production of methyl bromide for export to Article 5 countries beyond the 2005 phaseout in the U.S. The methyl bromide phaseout date for Article 5 countries is 2015 and allowing continuing U.S. production to meet such countries' basic domestic needs up to that phaseout date obviates the need to install ODS production capacity in those countries. The Protocol allows limited production for this purpose up until January 1, 2015. The CAA, in Section 604(e)(3), does not specify a termination date for this exemption but does require consistency with the Protocol. In addition, section 614 requires the regulations to be no less stringent than the Protocol. Therefore, EPA is proposing to allow limited production of methyl bromide for export to Article 5 countries up until January 1, 2015.

VIII. Other Options

In this section EPA describes another option it considered regarding the baseline for CFC production and why it is not the Agency's preferred approach. EPA looked at granting allowances to companies exporting CFCs to Article 5 countries based on an average of data from the range of years specified in Article 2A (for Group I) and 2C (for Group III) of the Protocol (see section V). Although this is not EPA's preferred approach, the Agency is seeking comment on the use of these time periods to calculate the baseline.

EPA prefers a more stringent approach than that described in Articles 2A and 2C. As described earlier, observed market indicators suggest that there is no shortage of CFCs in the marketplace in Article 5 countries because the price of CFCs has remained stable over the past several years. Also, as described earlier, reported data described in the October 2004 TEAP Task Force Report on Basic Domestic Needs indicates that CFC supplies are stable.

In addition, historically the U.S. has not been a major supplier of CFCs to

developing countries. EPA's tracking database shows that the U.S. supply of CFCs has been significantly lower than the TEAP report indicates. (To view the aggregate data on CFC supply and production by the U.S., visit EDOCKET OAR–2005–0151.) Also, the ability to reuse and recycle CFCs taken out of refrigeration products provides an additional source of supply should demand exceed expectations.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this proposed regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a ''significant'' regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined by OMB and EPA that this proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore not subject to OMB review under the Executive Order.

B. Paperwork Reduction Act

This proposed action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR part 82, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Avenue, NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, small entity is defined as: (1) A small business that is identified by the North American Industry Classification System code (NAICS) in the table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	SIC small business size standard (in number of employees or millions of dollars)
1. Chemical and Allied Products, NEC	*422690*	*5169*	*100*

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities, as it regulates large corporations that produce, import, or export Class I ODSs. There are no small entities in this regulated industry. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law.

Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burden some alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This proposed rule imposes stricter baselines and reduction schedules for Article 5 allowances and extends the availability of an exemption from a regulatory prohibition. It does not impose mandates on State, local, or tribal governments and does not result in substantial expenditures for the private sector. Thus, today's rule is not subject to the requirements of sections 202 or 205 of the UMRA.

We determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments; therefore, we are not required to develop a plan with regard to small governments under section 203. Finally, because this proposed rule does not contain a significant intergovernmental mandate, the Agency is not required to develop a process to obtain input from elected state, local, and tribal officials under section 204.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule relates to an exemption used by large corporations that produce, import, or export Class I ODSs. It has no effect on State or local governments. Thus Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule relates to an exemption used by large multinational corporations that produce, import, or export Class I ODSs. It has no effect on tribal governments. Thus Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects on children of excessive exposure to UV radiation: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994; 30A: 1647–54; (2) Elwood JM, Jopson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK. ''Melanoma: childhood or lifelong sun exposure'' In: Grobb JJ, Stern RS, Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Kricker A, Armstrong, BK, English, DR, Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, et. al. ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma,'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, BK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

The methyl bromide phaseout date for Article 5 countries is 2015 and allowing continuing U.S. production to meet such countries' basic domestic needs avoids the need for those countries to install new ODS manufacturing facilities. The effect of extending the availability of Article 5 allowances for methyl bromide should be that methyl bromide that would otherwise be produced at new facilities in developing countries will instead be produced in the U.S. for export to those countries. The amount of methyl bromide that will be released to the atmosphere should remain the same regardless of the manufacturing location. In addition, avoiding the installation of new capacity is one means of ensuring that production levels continue to decline. Thus, this rule is not expected to increase the impacts on children's

health from stratospheric ozone depletion.

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life sun exposure.

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

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

Dated: September 14, 2005.

Stephen Johnson,

Administrator.

Title 40, Code of Federal Regulations, part 82, is amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Section 82.3 is amended by revising the entry for ''Article 5 allowance'' to read as follows:

§ 82.3 Definitions for class I and class controlled substances.

* * * * *

Article 5 allowances means the allowances apportioned under § 82.9(a), § 82.11(a)(2), and § 82.18(a).

* * * * *

3. Section 82.4 is amended by revising paragraphs (b)(1) and (h) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(b)(1) Effective January 1, 1996, for any Class I, Group I, Group II, Group III, Group IV, Group V or Group VII controlled substances, and effective January 1, 2005 for any Class I, Group VI controlled substances, and effective August 18, 2003, for any Class I, Group VIII substance, no person may produce, at any time in any control period (except that are transformed or destroyed domestically or by a person of another Party) in excess of the amount of conferred unexpended essential use allowances or exemptions, or in excess of the amount of unexpended critical use allowances, or in excess of the amount of unexpended Article 5 allowances as allocated under § 82.9 and § 82.11, as may be modified under § 82.12 (transfer of allowances) for that substance held by that person under the authority of this subpart at that time for that control period. Every kilogram of excess production constitutes a separate violation of this subpart.

* * * * *

(h) No person may sell in the U.S. any Class I controlled substance produced explicitly for export to an Article 5 country.

* * * * *

4. Section 82.9 is amended by revising paragraph (a)(4) to read as follows:

§ 82.9 Availability of production allowances in addition to baseline production allowances for Class I controlled substances.

(a) * * *

(4) 15 percent of their baseline production allowances for Class I, Group IV and Group V controlled substances listed under § 82.5 of this subpart for each control period beginning January 1, 1996 until January 1, 2010;

* * * * *

5. Section 82.11 is amended by revising paragraph (a) introductory text and adding a new paragraph (a)(2) and (a)(3) to read as follows:

§ 82.11 Exports of Class I controlled substances to Article 5 Parties.

(a) If apportioned Article 5 allowances under § 82.9(a) or § 82.11(a)(2), a person may produce Class I controlled substances, in accordance with the prohibitions in § 82.4 and the reduction schedule in § 82.11(a)(3), to be exported (not including exports resulting in transformation or destruction, or used controlled substances) to foreign states listed in appendix E to this subpart (Article 5 countries).

* * * * *

(2) Persons who reported exports of Class I, Group I controlled substances to Article 5 countries in 2000–2003 are apportioned baseline Article 5 allowances as set forth in § 82.11(a)(2)(i). Persons who reported exports of Class I, Group VI controlled substances to Article 5 countries in 1995–1998 are apportioned baseline Article 5 allowances as set forth in § 82.11(a)(2)(ii)).

(i) For Group I controlled substances:

Controlled substance	Person	Allowances (kg)
CFC–11	Honeywell	7,150
	Sigma Aldrich	1
CFC–113	Fisher Scientific	5
	Honeywell	313,686
	Sigma Aldrich	48
CFC–114	Honeywell	24,798
	Sigma Aldrich	1

(ii) For Group VI controlled substances:

Controlled substance	Person	Allowances (kg)
Methyl Bromide	Albemarle	1,152,714
	Ameribrom	176,903
	Great Lakes Chemical Corporation	3,825,846

(3) Phased Reduction Schedule for Article 5 Allowances allocated in § 82.11.

For each control period specified in the following table, each person is granted the specified percentage of the baseline Article 5 allowances apportioned under § 82.11.

Control period	Class I substances in group I (percent)	Class I substances in group VI (percent)
2006	50	80
2007	15	80
2008	15	80
2009	15	80
2010	0	80
2011	0	80
2012	0	80
2013	0	80
2014	0	80
2015	0	0

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Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Flightdeck Door Monitoring and Crew Discreet Alerting Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2005–22449; Notice No. 05–07]

RIN 2120–AI16

Flightdeck Door Monitoring and Crew Discreet Alerting Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration proposes to require passenger-carrying transport category airplanes used in domestic, flag, and supplemental operations to have a means to allow the flightcrew to visually monitor the door area outside the flightdeck. This means would allow the flightcrew to identify persons requesting entry into the flightdeck, and to detect suspicious behavior or potential threats. Second, the FAA proposes that, for operations requiring the presence of flight attendants, the flight attendants have a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. The proposed changes address standards adopted by the International Civil Aviation Organization following the September 11, 2001, terrorist attacks.

DATES: Comments must be received on or before November 21, 2005.

ADDRESSES: You may send comments [identified by Docket Number FAA–2005–22449] using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001. Due to the suspension of paper mail delivery to DOT headquarters facilities, we encourage commenters to send their comments electronically.
- Fax: 202–493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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.

Comments that you may consider to be of a sensitive security nature should not be sent to the docket management system. Send those comments to the FAA, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington DC 20591.

FOR FURTHER INFORMATION CONTACT: Joe Keenan, Air Carrier Operations Branch, Flight Standards Service, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166, facsimile (202) 267–9579, e-mail: *joe.keenan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

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.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations* Web page at; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number or notice number, of this rulemaking Authority for this Rulemaking.

Background

Activities Leading to This Proposal

Besides the steps the FAA took immediately after the terrorists' acts on September 11, 2001, the Office of the Secretary of Transportation (OST), Congress, and the FAA, took several longer terms actions to prevent hijackings on passenger-carrying airplanes used in air carrier service.

- On September 16, the Secretary of Transportation announced the creation of two rapid-response teams (RRT) to develop recommendations for improving security within the national aviation system. One team was tasked to develop recommendations to improve security at the Nation's airports; the other team was tasked to develop recommendations for aircraft integrity

and security, with a specific focus on cockpit access.

Members of the aircraft integrity and security RRT included representatives from American Airlines, The Boeing Company, Association of Flight Attendants, and the Air Line Pilots Association. Members of the Department of Transportation and the Federal Aviation Administration supported the RRT. In addition to regular team meetings, the RRT met with representatives from the airline operators, pilot and flight attendant associations, and parts manufacturers. The RRT also received numerous recommendations from the public as the result of an e-mail address setup on the FAA Web site.

On October 1, the RRT for aircraft integrity and security presented its final report to the Secretary of Transportation. The report made 17 recommendations. One recommendation recognized the need for (i) reinforced flightdeck doors and (ii) severe limitations to flightdeck entry. Anticipating the new severe limitations to flightdeck entry, the RRT made four recommendations for flightdeck access. As part of one recommendation, the RRT addressed the flightcrew's need for notification of a potential threat in the cabin by stating:

> With the flightdeck no longer readily accessible to flight attendants, they must have a method for immediate notification to the flight deck during a suspected threat in the cabin. On receipt of such a warning, the pilot would check to make sure that the flight deck door is secure and begin immediate landing procedures. Consideration should be given to systems that might be installed in the aircraft as well as a device that could be carried by a crew member. In those aircraft equipped with an automated evacuation alarm system, it may in the near term be an effective tool for such notification.

The RRT recommended that the ''industry develop a plan of feasible alternatives for emergency warnings within 30 days.''

A second flightdeck access recommendation addressed the value of monitoring the area outside the flightcrew's compartment door. The RRT stated:

> There is a consensus that cameras to monitor and view the area outside the flight deck door may add value. There should be continuous lighting outside the flight deck door for visibility, as well as to provide lighting for cameras. However, placement of a monitor in the limited space on the flight deck is a challenge. While there may be value in video or audio systems which provide information about activities throughout the cabin, we have no consensus on whether or how to proceed with this technology.

The RRT recommended that the ''industry evaluate the use of cameras and lighting outside the flight deck door within 6 months.''

• On November 19, Congress passed the Aviation and Transportation Security Act (ATSA) (Pub. L. 107–71). Section 104(b) of the ATSA states that the FAA Administrator may develop and implement methods—

> (1) To use video monitors or other devices to alert pilots in the flight deck to activity in the cabin, except that use of such monitors or devices shall be subject to nondisclosure requirements applicable to cockpit video records under [49 U.S.C. 1114(c)], * * * and
>
> (3) To revise the procedures by which cabin crews of aircraft can notify flight deck crews of security breaches and other emergencies, including providing for the installation of switches or other devices or methods in an aircraft cabin to enable flight crews to discreetly notify the pilots in the case of a security breach occurring in the cabin.

• On November 25, 2002, Congress passed the Homeland Security Act (HSA) to create the Department of Homeland Security (Pub. L. 107–296). Section 1403(b) of the HSA amended the ATSA to state that the Under Secretary of Transportation for Security, may ''Require that air carriers provide flight attendants with a discreet, hands-free, wireless method of communicating with the pilots.''

International Standards

At the time of the terrorists' attack, the International Civil Aviation Organization (ICAO), an international body consisting of 188 member countries, was reviewing proposed changes to Annex 6 of the Convention on International Civil Aviation. Annex 6, Part I contains requirements for the operation of airplanes involved in international commercial air transport.

In light of the attack and comments received from its members States, ICAO proposed new provisions with a particular focus on security of the flightcrew compartment (also known as the flightdeck). Those provisions contained requirements for a flightdeck door and related requirements for locking, unlocking, and monitoring the area outside the door, and discreet notification of the flightcrew in the event of security breaches in the cabin. ICAO adopted the provisions in Chapter 13, Security, on March 15, 2002.

Standard 13.2, Security of the flight crew compartment, states:

13.2.1 In all aeroplanes which are equipped with a flight crew compartment door, this door shall be capable of being locked, and means shall be provided by which cabin crew can discreetly notify the flight crew in the event of suspicious activity or security breaches in the cabin.

13.2.2 From 1 November 2003, all passenger-carrying airplanes of a maximum certificated take-off weight mass in excess of 45500 kg or with a passenger seating capacity greater than 60 shall be equipped with an approved flight crew compartment door that is designed to resist penetration by small arms fire and grenade shrapnel, and to resist forcible intrusions by unauthorized persons. This door shall be capable of being locked and unlocked from either pilot's station.

13.2.3 In all aeroplanes which are equipped with a flight crew compartment door in accordance with 13.2.2:

(a) This door shall be closed and locked from the time all external doors are closed following embarkation until any such door is opened for disembarkation, except when necessary to permit access and egress by authorized persons; and

(b) Means shall be provided for monitoring from either pilot's station the entire door area outside the flight crew compartment to identify persons requesting entry and to detect suspicious behaviour or potential threat.

The deadline for implementation of the ICAO standards was November 1, 2003.

Discussion of the Proposal

The FAA proposes to amend part 121 by requiring a means for the flightcrew to monitor the area outside the flightdeck door and a means for the cabin crew to discreetly notify the flightcrew of a suspicious activity or security beach in the cabin. For purposes of this rule, flightcrew refers to pilots and flight engineers, and cabin crew refers to crewmembers. The purpose of monitoring is to identify anyone requesting entry to the flightdeck and to detect suspicious behavior or potential threats. The proposal would set forth a standard that would allow industry to consider various options to comply with the final rule.

The proposed rule addresses the ICAO standard. The ICAO standard applies to all passenger-carrying airplanes of a maximum certificated take-off mass in excess of 45,500 kg (approximately 100,309 lbs) or with a passenger seating capacity greater than 60 involved in international commercial air transport. This proposed rule applies only to passenger-carrying operations conducted under part 121 that require a lockable door between the cockpit and passenger compartment. Neither the ICAO standard nor this proposed rule will apply to all-cargo operations. Additionally, part 121 operations do not encompass all passenger-carrying airplanes with a maximum certificated take-off mass in excess of 45500 Kg (the ICAO standard) operated in the U.S.

Accordingly, since some airplanes may operate both domestically and internationally under other operational rules (*e.g.*, parts 91, 125 and 135), the U.S. will not fully comply with the ICAO standard.

The FAA's proposed rule will require passenger-carrying part 121 operators to retrofit their aircraft with a means to monitor the area on the cabin side of the flightdeck door and adopt measures to comply with the flightcrew notification requirement. Since there is a retrofit requirement, the FAA proposes to give industry 2 years to comply from the time a final rule is adopted. This time should be sufficient for industry to consider various options, rather than requiring the industry to focus solely on one possible option in order to meet a more immediate implementation date.

In proposed § 121.313(k), the use of the phrase ''a means to monitor from the flightdeck side of the door'' permits at least two methods to comply with the proposed rule, covering monitoring from the flightdeck. The first method is a video system. The video system would transmit video images to a monitor or monitors appropriately situated on the flightdeck to allow viewing of the area outside the flightdeck (herein referred to the ''door area'') from the flightdeck side of the door. A crewmember would provide audio confirmation to the flightcrew that the door area is clear, including confirmation that the lavatory is clear. A second method would involve visual identification of the door area, coupled with an audio confirmation procedure. Through a viewing device installed in the flightdeck door, one person on the flightdeck would view the door area and identify the person seeking access. Then a crewmember would provide audio confirmation that the door area is clear while viewing the outside door area. For example, before providing audio confirmation to the flightdeck, the crewmember would (1) assure that no passengers are standing near the door area, and (2) that no passenger is in any forward lavatory.

The FAA believes both methods comply with the intent of ICAO's requirement that the door area outside the flightdeck must be monitored. The purpose of monitoring is to identify people requesting access to the flightdeck. Prior to opening the flightdeck door, identifying people by a properly designed video camera system and audio confirmation or through operational procedures using audio and other visual identification means are both appropriate. Since the FAA's proposed rule is a performance standard, other methods may be developed to comply with this rule and the FAA seeks input from industry for other means of compliance.

Proposed § 121.582 would heighten security requirements by giving the cabin crew a means to discreetly notify the flightcrew of suspicious activity or security breaches in the cabin. The FAA agrees with the ICAO position that discreet notification of the flightcrew should be provided. The FAA believes that current, on board communication crew alert systems could, along with FAA-approved operator-developed procedures, meet this requirement. For example, subtly keying the interphone in a specific manner could be used. The rule would also allow the use of more sophisticated technology, such as hands-free, wireless method as considered by Congress in the Homeland Security Act. However, any installed system must protect against false alarms or nuisance alerts that would make the system unreliable.

While an airplane is moving for purposes of a flight segment, proposed § 121.584 requires part 121 operators to keep the flightdeck door locked and closed unless an authorized person uses a device and procedure required by § 121.313(k) to view the area outside the flightdeck compartment door. In proposed § 121.584(a), the phrase ''airplane moves in order to initiate a flight segment'' includes movement under its own power or if the airplane is being moved by another device for example, a tug. In proposed § 121.584(a)(1), the phrase ''a person authorized to be on the flightdeck'' is anyone who obtained access to the flightdeck pursuant to § 121.547. Proposed § 121.584(a)(2) requires that the procedures in § 121.584(a)(1)(i) and (ii) be satisfactorily accomplished before the crewmember in charge of the flightdeck authorizes the door to be unlocked and opened. In proposed § 121.584(a)(2), the phrase ''the crewmember in charge'' means the flightcrew member in charge of the flightdeck at the time the door is opened, which may be the first officer if the pilot-in-command is not on the flightdeck. It is the FAA's intent to meet the ICAO standard that requires monitoring the area outside the flightdeck door by permitting the use of a peep hole to view a large area outside the flightdeck door in conjunction with the audio confirmation, for example, from a crewmember who is outside the flightdeck and who can observe that the flightdeck door area is secure.

Proposed § 121.584(a) requires every certificate holder operating under part 121 to implement this rule at the time the final rule is published if the operator already has the means to monitor the area outside the flightdeck door as required by proposed § 121.313(k) (such as a peephole). The FAA has determined there is no reason to delay the security benefits of this operating rule for operators that can meet the rule at the time of final rule publication. Operators of airplanes that currently do not have a means to monitor the area outside the flightdeck door, have 2 years from the date the final rule is published to install such devices (such as a video system). But during that 2-year period, once an airplane is equipped with a means to monitor the area outside the flightdeck, then the certificate holder and the crewmembers must comply with proposed section 121.584(a) when operating that airplane.

The U.S. filed a difference with ICAO for Annex 6, Part 1, Chapter 13, provision 13.2.3 on November 6, 2002. The FAA will significantly alter its filing concerning the difference associated with this provision to reflect the rule that is finally adopted. This proposed rule does not meet ICAO standards in the following areas.

- The proposal in this action will not be implemented before the November 1, 2003, ICAO deadline.
- Any passenger-carrying airplanes operated under parts 91, 125, and 135 including international commercial air transport operations with a maximum certificated takeoff mass in excess of 45500 kg or with a seating capacity of greater than 60 (as ICAO requires), are not covered by this proposed rule.
- The proposed rule will permit an alternative means to monitor the area outside the flightdeck door from the flightdeck side of the door, instead of from either pilot station, as ICAO requires.

Harmonization Effort

The FAA considers adopting and maintaining coordinated standards between the United States and its counterparts to be a high priority. The FAA is working informally with the Joint Aviation Authorities (JAA) and Transport Canada Civil Aviation to ensure the proposed rulemakings on flightdeck door monitoring and crew alerting systems are similarly worded and have the same requirements. On August 1, 2003, the JAA published Amendment 6 to JAR–OPS 1, Commercial Air Transportation (Aeroplanes). This amendment requires a means or procedure by which the cabin crew can notify the flightcrew in the event of suspicious activity or security breaches in the cabin. Additionally, the JAA is finalizing a separate amendment to JAR–OPS 1 that,

like this proposed rule, requires monitoring of the door area outside the flight crew compartment.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has determined that there are no requirements for information collection associated with this proposed rule.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. sections 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 $100 million or more annually adjusted for inflation, which makes the 2004 value about $120,700,000.

In conducting these analyses, FAA has determined this proposed rule (1) would have benefits that justify its costs; (2) would be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 and would be ''significant'' as defined in DOT's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would move toward existing and potential international standards as the basis of U.S. standards; and (5) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. The FAA has placed these analyses in the docket and they are summarized in the following sections.

Regulatory Evaluation Summary

Costs—The FAA requests comments on the methodology, assumptions, and results of the economic analysis and asks commenters to provide supporting data, documentation, and rationale for their comments.

If the operators decide to develop appropriate procedures to comply with the proposed rule, the FAA estimates that there could be minimal compliance costs. Although not required to do so, operators may decide to comply by installing a video camera surveillance system. Thus, the following FAA's estimated costs of installing a video camera surveillance system represent the high-end cost of complying with the proposed rule.

Based on numbers developed at the end of 2003, the proposed rule would affect 6,190 airplanes (4,487 turbojets, 1,203 regional jets, and 500 large (>20 seats) turboprops). If a final rule were issued on January 1, 2004, the 2-year compliance period would allow 550 of these airplanes to be retired in 2004 and 2005 and not be retrofitted, resulting in 5,640 retrofitted airplanes. Further, 4,360 airplanes that are projected to be manufactured between 2004 and 2013 would have these systems installed as original operating equipment.

Certificate holders that choose to install a video camera system to comply with this rule, would incur the following costs. Some turbojets would need a two- or three-camera system while regional jets, including turbojets and turboprops, would need a one-camera system. AirWorks, AEI/AD Aerospace, and Goodrich are the only vendors currently supplying these systems for airplanes. Many of their systems have Supplemental Type Certificates (STCs) issued by the FAA. These vendors are selling their systems to several European and Asian airlines as a result of United Kingdom (UK) Department for Transport Directive 21(a), issued on January 27, 2003, which strictly follows the ICAO requirements including the November 1, 2003 deadline. Thus, the FAA bases its estimated average costs on the vendors' reported costs.

Using the systems we examined produced the following costs. For a future production airplane, this system would cost $16,000 for a turbojet and $9,000 for a regional jet or turboprop. It would take 16 labor hours ($1,280) to install on a turbojet and 12 labor hours ($960) on a regional jet. The total cost would be $17,280 for a turbojet and $9,960 for a regional jet or turboprop. Production schedules would not be disrupted.

For an existing airplane, the retrofitting kit would cost $17,000 for a turbojet and $10,000 for a regional jet or turboprop. If the retrofit were completed during a regularly scheduled maintenance check, it would take 48 labor hours ($3,840) for a turbojet and 36 hours ($2,880) for a regional jet or turboprop. The per airplane retrofit cost would be $20,840 for a turbojet and $12,880 for a regional jet or turboprop. If the retrofit must be completed during a dedicated maintenance session, labor time would increase to 96 hours ($7,680) for a turbojet and 72 hours ($5,760) for a regional jet or turboprop. In addition, the airplane would be out of service for 1 day resulting in lost net revenue ranging from $7,850 to $21,550 for a turbojet depending upon its type and size and from $1,600 to $4,850 for a regional jet or turboprop.

However, the FAA believes the airlines have sufficient compliance time to complete the retrofit during a scheduled maintenance check. For the most popular airplane models, several video camera surveillance system STCs already exist. In addition, the FAA anticipates all remaining airplane models will have STCs issued by mid-2004. Thus, airlines will have from 18 to 24 months to comply with the rule. During that time the FAA believes each airplane will have an overnight maintenance check during which the retrofit could be accomplished without loss of revenue time. To the extent these retrofits could not be completed during regularly scheduled maintenance, the FAA underestimated the potential compliance costs. The FAA specifically requests comments on this particular assumption.

The total cost to install this system on future production airplanes between 2004 and 2014 would be $64 million, or a present value of $44 million. The total cost to retrofit this system on existing airplanes during 2004 and 2005 would be $102 million ($34 million in 2004 and $68 million in 2005), which has a present value of $91 million.

The FAA estimates an average of 1 hour per year to inspect and maintain the system, resulting in a total maintenance expenditure of $5.5 million between 2004 and 2014, which has a present value of $3.5 million. As the mean times between failures for the components would be longer than 10 years, the FAA calculates no replacement costs during the time frame of this analysis.

The system would add between 12 and 17 pounds to an airplane's weight, which would increase average annual per airplane fuel consumption between 68 and 328 gallons. Using a price of

$0.80 per gallon, the FAA calculates the total additional fuel cost to be $14 million between 2004 and 2014, which has a present value of $9 million.

As shown in Table 1, the total costs between 2004 and 2014 of installing video camera surveillance systems would be $185 million, which has a present value of $148.5 million.

TABLE 1.—TOTAL AND PRESENT VALUES OF COSTS TO INSTALL VIDEO CAMERA SURVEILLANCE SYSTEMS IN PART 121 AIRPLANES (2004–2014)

[In 2003 $millions]

Source of cost	Total cost	Present value total cost
Install on Future Production Airplanes	$64.0	$44.0
Retrofit on Existing Airplanes	102.0	92.0
System Maintenance	5.5	3.5
Fuel Consumption	14.0	9.0
Total	185.5	148.5

As shown in Table 2, the largest annual expenditures would be in 2004, $40 million, and, in 2005, $76 million. The present value of the costs in 2004 and 2005 would be about 70 percent of the total present value costs. The annual costs thereafter would be about $6.5 million to $9 million for the new airplanes and for fuel and maintenance.

TABLE 2.—TOTAL COSTS BY YEAR FOR PART 121 OPERATORS OF HAVING VIDEO CAMERA SURVEILLANCE SYSTEMS

[In 2003 $millions]

Year	Future production airplanes cost	Retrofitting airplanes cost	Fuel and maintenance cost	Total cost	Present value total cost
2004	$5.675	$33.750	$0.481	$39.906	$37.295
2005	6.290	68.523	1.089	75.902	66.309
2006	6.126	0.000	1.616	7.742	6.343
2007	6.863	0.000	1.824	8.687	6.656
2008	6.379	0.000	1.889	8.268	5.922
2009	6.192	0.000	1.949	9.141	5.452
2010	5.766	0.000	2.007	7.773	4.867
2011	6.089	0.000	2.066	8.155	4.772
2012	5.462	0.000	2.130	7.592	4.153
2013	4.542	0.000	2.196	6.738	3.449
2014	4.399	0.000	2.261	6.660	2.812
Total	63.783	102.273	19.508	186.564	148.030

The cost of instituting a flightdeck alerting system for crewmember could be met by a variety of measures such as special signals through the interphone system or modifying existing crew notification devices or procedures. As such, the FAA determines that this proposed requirement would impose minimal costs.

Benefits—The proposed rule is one of a series of rulemaking actions aimed at preventing or deterring an occurrence similar to the September 11 terrorist attacks. It is designed to ensure that pilots do not open the flightdeck door and admit a potential hijacker because the pilots will be able to recognize who is trying to gain entry. It is also designed to alert the pilots to problems in the cabin through the crew discreet monitoring system and allow them to take the appropriate actions.

As witnessed on September 11, 2001, terrorist acts can result in the complete destruction of an airplane with the loss of all on board and with huge collateral damage far exceeding that of the airplane and passengers. The economic and social costs of the September 11 attacks have been measured in the billions of dollars. While the FAA cannot predict the frequency and severity of future terrorist acts against aviation, it does expect that there will be such attempts. The value of preventing a single loss of an average flight is estimated to be about $375 million, without consideration of collateral damage. However, the potential benefits from preventing the destruction of an operating airplane cannot be precisely quantified nor specifically allocated to each of the multiple parallel regulatory actions being taken by the FAA and other Federal agencies. The FAA concludes that there is a high probability that the benefits of this proposed rule would exceed its costs. In addition to preventing the extraordinary costs of another attack, this proposed rule responds to the interest of the U.S. Congress as specified in the ATSA. Further, the need for this proposed rule is illustrated by the fact that ICAO has made flightdeck surveillance a requirement for airplanes with more than 60 seats that travel internationally.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals

and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. If the agency determines that it would, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As a proxy for the operator's ability to afford the cost of compliance, the FAA calculated the ratio of the total cost of the rule as a percentage of annual revenue. The FAA determined that the maximum percentage would be 1.7 percent for one small airline while only two other airlines would have percentages greater than 1 percent. It should be emphasized that these estimated costs are for the high cost method of compliance, which would not be required by the proposed rule. The FAA does not believe that such costs represent a significant economic impact.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator of the Federal Aviation Administration certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA assessed the potential effect of this proposed rulemaking and determined that the proposed amendment is largely consistent with JAA and ICAO standards. However, the international standards are being reviewed and they may be moving closer to the FAA position. Therefore, the FAA determined that this proposed rule would be in compliance with the Trade Agreement Act.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure adjusted annually for inflation, which is about $120,700,000 in 2004, in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations Affecting Interstate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the Code of Federal Regulations (CFR) in a manner affecting interstate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect interstate aviation in Alaska. The FAA therefore specifically requests comments on whether there is justification for applying the proposed rule differently in interstate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Energy Impact

The energy impact of this proposal has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. Section 6362) and FAA Order 1053.1. It has been determined that this proposal is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of Title 14 of the Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 is revised to read:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

2. Section 121.313 is amended by adding new paragraph (k) to read as follows:

§ 121.313 Miscellaneous equipment.

* * * * *

(k) Except for all-cargo operations as defined in section 119.3 of this subchapter, after (insert date 2 years after final rule publication date) for all passenger-carrying airplanes that require a lockable flightdeck door in accordance with paragraph (f) of this section, a means to monitor from the flightdeck side of the door the area outside the flightdeck door to identify persons requesting entry and to detect suspicious behavior and potential threats.

3. Add new § 121.582 as follows:

§ 121.582 Means to discreetly notify a flightcrew.

Except for all-cargo operations as defined in section 119.3 of this subchapter, after (insert date 180 days after final rule publication date), for all passenger carrying airplanes that require a lockable flightdeck door in accordance with 121.313(f), the certificate holder must have an approved means by which the cabin crew can discreetly notify the flightcrew in the event of suspicious activity or security breaches in the cabin.

4. Add new § 121.584 as follows:

§ 121.584 Requirement to view the area outside the flightdeck door.

(a) From the time the airplane moves in order to initiate a flight segment through the end of that flight segment,

no person may unlock or open the flightdeck door unless:

(1) A person authorized to be on the flightdeck uses an approved audio procedure and an approved visual device to verify that:

(i) The area outside the flightdeck door is secure, and;

(ii) If someone outside the flightdeck is seeking to have the flightdeck door opened, that person is not under duress, and;

(2) After the requirements of paragraph (a)(1) have been satisfactorily accomplished, the crewmember in charge on the flightdeck authorizes the door to be unlocked and open.

(b) Before (insert date 2 years after final rule publication date) paragraph (a) applies only to the operation of an airplane that is equipped with a means to monitor the flightdeck door area as required by § 121.313(k).

Issued in Washington, DC on September 14, 2005.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. 05–18806 Filed 9–20–05; 8:45 am]

BILLING CODE 4910–13–P

Federal Register

Wednesday,
September 21, 2005

Part V

Department of Labor

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

Department of the Treasury

Internal Revenue Service

26 CFR Part 54

Extension of Certain Time Frames for Employee Benefit Plans Affected by Hurricane Katrina; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Parts 2560 and 2590

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

Extension of Certain Time Frames for Employee Benefit Plans Affected by Hurricane Katrina

AGENCIES: Employee Benefits Security Administration, Department of Labor; Internal Revenue Service, Department of the Treasury.

ACTION: Extension of time frames.

SUMMARY: This document announces the extension of certain time frames under the Employee Retirement Income Security Act and Internal Revenue Code for group health plans, disability and other welfare plans, pension plans, participants and beneficiaries of these plans, and group health insurance issuers directly affected by Hurricane Katrina.

EFFECTIVE DATES: September 21, 2005.

FOR FURTHER INFORMATION CONTACT: Amy Turner, Employee Benefits Security Administration, Department of Labor, at 202–693–8335; or Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at 202–622–6080.

SUPPLEMENTARY INFORMATION:

I. Purpose

As a result of Hurricane Katrina, a number of participants and beneficiaries covered by group health plans, disability or other welfare plans, and pension plans may encounter problems in exercising their health coverage portability or continuation coverage rights, or in filing or perfecting their benefit claims. Recognizing the numerous challenges already facing affected participants and beneficiaries, it is important that plans and the Agencies take steps to minimize the possibility of individuals losing benefits because of a failure to comply with certain pre-established time frames. Similarly, the Agencies recognize that affected plans also may have difficulty in complying with certain notice obligations related to a participant's health coverage portability or continuation coverage rights.

Accordingly, under the authority of section 518 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1148, and section 7508A of the Internal Revenue Code of 1986 (Code), 26 U.S.C. 7508A, the Agencies are extending certain time frames otherwise applicable to group health plans, disability and other welfare plans, pension plans, their participants and beneficiaries, and group health insurance issuers, under ERISA and the Code.[1]

The Agencies believe that such relief is immediately needed to preserve and protect the benefits of participants and beneficiaries in affected plans. Accordingly, the Agencies have determined, pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b) and (d), that there is good cause for making the relief provided by this notice effective immediately upon publication and that notice and public participation may result in undue delay and, therefore, be contrary to public interest.

The relief provided by this Notice supplements other Hurricane Katrina disaster relief, which can be accessed on the Internet at *http://www.dol.gov* and *http://www.irs.gov.*

II. Background

Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) provides portability of group health coverage by, among other things, placing limitations on the ability of a group health plan or group health insurance issuer to impose a preexisting condition exclusion and by requiring special enrollment rights. ERISA section 701 and Code section 9801. Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) permits qualified beneficiaries who lose coverage under a group health plan to elect continuation health coverage. ERISA section 601 and Code section 4980B. Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503–1 require employee benefit plans subject to Title I of ERISA to establish and maintain reasonable procedures governing the determination and appeal of claims for benefits under the plan. All of the foregoing provisions include timing requirements for certain acts in connection with employee benefit plans, some of which are being modified by this notice.

A. HIPAA Time Frames

The HIPAA portability provisions generally provide that a group health plan or group health insurance issuer may disregard a period of creditable coverage if there is a subsequent 63-day break in coverage. ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A). Also, a newborn, adopted child, or child placed for adoption may not be subject to a preexisting condition exclusion period if covered under creditable coverage within 30 days of birth, adoption, or placement for adoption. ERISA section 701(d) and Code section 9801(d).

The HIPAA special enrollment provisions generally provide that employees must request enrollment within 30 days of a special enrollment trigger (including loss of eligibility of coverage or loss of employer contributions) to be eligible for special enrollment. ERISA section 701(f) and Code section 9801(f).

The HIPAA certification rules prescribe time periods for the provision of certificates of creditable coverage upon loss of coverage. Under the regulations, plans and issuers subject to the COBRA continuation coverage provisions are required to provide an automatic certificate no later than the time for providing a COBRA election notice. Plans and issuers not subject to COBRA are required to provide the automatic certificate within a reasonable time after coverage ceases. 29 CFR 2590.701–5(a)(2)(ii) and 26 CFR 54.9801–5(a)(2)(ii).

B. COBRA Time Frames

The COBRA continuation coverage provisions generally provide a qualified beneficiary a period of at least 60 days to elect COBRA continuation coverage under a group health plan. ERISA section 605 and Code section 4980B(f)(5).

Plans are required to allow payers to pay premiums in monthly installments and plans cannot require payment of premiums before 45 days after the day of the initial COBRA election. ERISA section 602(3) and Code section 4980B(f)(2)(C). Under the COBRA rules, a premium is considered paid timely if it is made not later than 30 days after the first day in the period for which payment is being made. ERISA section 602(2)(C) and Code section 4980B(f)(2)(B)(iii), 26 CFR 54.4980B–8 Q&A–5(a).

[1] ERISA section 518 and Code section 7508A generally provide that, in the case of an employee benefit plan, sponsor, administrator, participant, beneficiary, or other person with respect to such a plan, affected by a Presidentially declared disaster, notwithstanding any other provision of law, the Secretaries of Labor and the Treasury may prescribe (by notice or otherwise) a period of up to one year that may be disregarded in determining the date by which any action is required or permitted to be completed. Section 518 of ERISA and section 7508A of the Code further provide that no plan shall be treated as failing to be operated in accordance with the terms of the plan solely as a result of complying with the postponement of a deadline under those sections.

Notice provisions prescribe time periods for individuals to notify the plan of a qualifying event or determination of disability and for plans to notify qualified beneficiaries of their rights to elect COBRA continuation coverage. ERISA section 606 and Code section 4980B(f)(6), 29 CFR 2590.606–3.

C. Claims Procedure Time Frames

Section 503 of ERISA and the Department of Labor's claims procedure regulation at 29 CFR 2560.503–1 require employee benefit plans to establish and maintain a procedure governing the filing and initial disposition of benefit claims, and provide claimants with a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary. Under the regulation, plans cannot have provisions that unduly inhibit or hamper the initiation or processing of claims for benefits. Further, group health plans and disability plans must provide claimants at least 180 days following receipt of an adverse benefit determination to appeal (60 days in the case of pension plans and other welfare benefit plans).

III. Relief

A. Relief for Affected Plan Participants, Beneficiaries, Qualified Beneficiaries, and Claimants

With respect to plan participants, beneficiaries, qualified beneficiaries, or claimants directly affected by Hurricane Katrina (as defined in paragraph III.C.(1)), group health plans, disability and other welfare plans, pension plans, and health insurance issuers subject to part 7 of ERISA, must disregard the period from August 29, 2005 through January 3, 2006 when determining any of the following time periods and dates—

(1) The 63-day break in coverage period under ERISA section 701(c)(2)(A) and Code section 9801(c)(2)(A),

(2) The 30-day period to secure creditable coverage without a preexisting condition exclusion for certain children under ERISA section 701(d) and Code section 9801(d),

(3) The 30-day period to request special enrollment under ERISA section 701(f) and Code section 9801(f),

(4) The 60-day period to elect COBRA continuation coverage under ERISA section 605 and Code section 4980B(f)(5),

(5) The date for making COBRA premium payments pursuant to ERISA section 602(2)(C) and (3) and Code section 4980B(f)(2)(B)(iii) and (C),

(6) The date for individuals to notify the plan of a qualifying event or determination of disability under ERISA section 606(a)(3) and Code section 4980B(f)(6),

(7) The date within which individuals may file a benefit claim under the plan's claims procedure pursuant to 29 CFR 2560.503–1, and

(8) The date within which claimants may file an appeal of an adverse benefit determination under the plan's claims procedure pursuant to 29 CFR 2560.503–1(h).

B. Relief for Group Health Plans

With respect to group health plans, their sponsors and administrators, and health insurance issuers subject to part 7 of ERISA, that are directly affected by Hurricane Katrina (as defined in paragraph III.C.(3)), the period from August 29, 2005 through January 3, 2006 shall be disregarded when determining the following dates—

(1) The date for providing an automatic certificate of creditable coverage under 29 CFR 2590.701–5(a)(2)(ii) and 26 CFR 54.9801–5(a)(2)(ii), and

(2) The date for providing a COBRA election notice under ERISA section 606 and Code section Code section 4980B(f)(6).

C. Definitions

For purposes of this notice—

(1) A participant, beneficiary, qualified beneficiary, or claimant directly affected by Hurricane Katrina means an individual who resided, lived, or worked in one of the disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane; or if the employee benefit plan providing the individual's coverage was directly affected (as defined in paragraph III.C.(3)).

(2) The term disaster areas means the counties and parishes in Louisiana, Mississippi or Alabama that have been or are later designated as disaster areas eligible for Individual Assistance by the Federal Emergency Management Agency because of the devastation caused by Hurricane Katrina.

(3) An employee benefit plan is directly affected by Hurricane Katrina if the principal place of business of the employer that maintains the plan (in the case of a single-employer plan, determined disregarding the rules of section 414(b) and (c) of the Code); the principal place of business of employers that employ more than 50 percent of the active participants covered by the plan (in the case of a plan covering employees of more than one employer, determined disregarding the rules of section 414(b) and (c) of the Code); the office of the plan or the plan administrator; or the office of the primary recordkeeper serving the plan, was located in one of disaster areas (as defined in paragraph III.C.(2)) at the time of the hurricane.

D. Any later extension of the January 3, 2006 date by the Agencies will automatically apply for purposes of the deadlines addressed by this notice.

IV. Examples

The following examples illustrate the time frame for extensions required by this notice. In each example, assume that the individual described is directly affected by the hurricane.

Example 1. (i) *Facts.* Individual *A* works for Employer *X* and participates in *X*'s group health plan. On August 29, 2005, the day of Hurricane Katrina, *X*'s business is destroyed and the plan ceases to function. *A* has no other creditable coverage.

(ii) *Conclusion.* In this *Example 1,* when determining *A*'s 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. Accordingly, *A* would not incur a 63-day break in coverage until 63 days after January 3 (which is March 7, 2006) and the last day of any special enrollment period is 30 days after January 3 (which is February 2, 2006).

Example 2. (i) *Facts.* Same facts as *Example 1* and another employer that is part of the same controlled group as *X* continues to operate and sponsor a group health plan. *A* is provided a COBRA election notice on October 2, 2005.

(ii) *Conclusion.* In this *Example 2,* the period from October 2, 2005 through January 3, 2006 is disregarded for purposes of determining *A*'s COBRA election period. The last day of *A*'s COBRA election period is 60 days after January 3, 2006 (which is March 4, 2006).

Example 3. (i) *Facts.* Individual *B* participated in a group health plan and lost eligibility for coverage on August 14, 2005.

(ii) *Conclusion.* In this *Example 3, B* had been without coverage for 14 days before the day of the hurricane. When determining *B*'s 63-day break in coverage period and special enrollment period, the period from August 29, 2005 through January 3, 2006 is disregarded. The last day of *B*'s 63-day break in coverage period is 49 days after January 3 (which is February 21, 2006) and the last day of any special enrollment period is 16 days after January 3, 2006 (which is January 19, 2006).

Example 4. (i) *Facts.* Before the hurricane, Individual *C* was receiving COBRA continuation coverage under a group health plan. More than 45 days had passed since *C* had elected COBRA. Monthly premium payments were due by the first of the month. The plan does not permit qualified beneficiaries longer than the statutory 30-day grace period for making premium payments. *C* made a timely August payment, but not a September payment, before the hurricane.

(ii) *Conclusion.* In this *Example 4,* the period from August 29, 2005 through January 3, 2006 is disregarded for purposes of making monthly COBRA premium installment

payments. Premium payments made by 30 days after January 3, 2006 (which is February 2, 2006) for September, October, November, December and January are timely.

Example 5. (i) *Facts.* Same facts as *Example 4.* By February 2, 2006, a payment equal to two months' premium has been made for *C.*

(ii) *Conclusion. C* is entitled to COBRA continuation coverage for September and October 2005.

Example 6. (i) *Facts.* Individual *D* is a participant in a group health plan. On October 1, 2004, *D* received medical treatment for a condition covered under the plan, but a claim relating to the medical treatment was not yet submitted. Under the plan, claims must be submitted within 365 days of the participant's receipt of the medical treatment.

(ii) *Conclusion.* For purposes of determining the 365-day period applicable to *D*'s claim, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, *D*'s last day to submit a claim is 34 days after January 3, 2006, which is February 6, 2006.

Example 7. (i) *Facts.* Individual *E* received a notification of an adverse benefit determination from his disability plan on August 10, 2005. The notification advised *E* that there are 180 days within which to file an appeal.

(ii) *Conclusion.* When determining the 180-day period within which *P*'s appeal must be filed, the period from August 29, 2005 through January 3, 2006 is disregarded. Therefore, *E*'s last day to submit an appeal is 162 days after January 3, which is June 14, 2006.

Signed at Washington, DC, this 16th day of September, 2005.

Ann Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

Signed this 16th day of September, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement, Internal Revenue Service, Department of the Treasury.

[FR Doc. 05–18901 Filed 9–19–05; 9:53 am]

BILLING CODE 4510–29–P; 4830–01–P

Federal Register

Wednesday,
September 21, 2005

Part VI

The President

Proclamation 7931—National Hispanic Heritage Month, 2005

Proclamation 7932—Constitution Day and Citizenship Day, Constitution Week, 2005

Proclamation 7933—National Farm Safety and Health Week, 2005

Proclamation 7934—Family Day, 2005

Federal Register
Vol. 70, No. 182
Wednesday, September 21, 2005

Presidential Documents

Title 3—

The President

Proclamation 7931 of September 16, 2005

National Hispanic Heritage Month, 2005

By the President of the United States of America

A Proclamation

Throughout our history, America has been a land of diversity and has benefitted from the contributions of people of different backgrounds brought together by a love of liberty. During National Hispanic Heritage Month, we celebrate the achievements of Hispanic Americans and the significant role they have played in making our Nation strong, prosperous, and free.

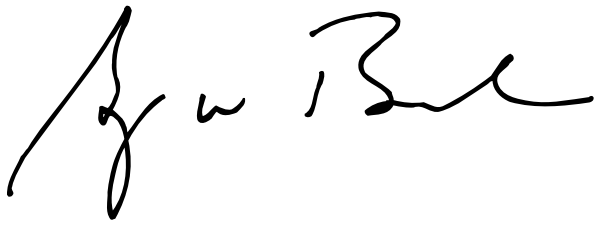
The contributions of Hispanic Americans have made a positive impact on every part of our society. Americans of Hispanic descent are astronauts and athletes, doctors and teachers, lawyers and scientists. The vibrancy of our Nation's Hispanic performers enriches music, dancing, and the arts. Hispanic Americans serve at every level of government, including as Attorney General of the United States and Secretary of Commerce. Latino entrepreneurs are starting and growing businesses all across America, creating jobs and opportunities. The hard work and determination of Hispanic Americans continue to inspire all those who dream of a better life for themselves and their families.

Our Nation's Hispanic community has contributed to the advance of freedom abroad and to the defense of freedom at home. In every generation, Hispanic Americans have served valiantly in the United States military. Today there are more than 200,000 Hispanic Americans serving in the Armed Forces, and our Nation is grateful for their courage and sacrifice. In addition, thousands of Hispanic Americans are helping to defend and protect our homeland by serving as police officers and firefighters. All Americans are thankful for their daily work in helping to keep our Nation safe.

During National Hispanic Heritage Month, we join together to recognize the proud history and rich culture of Hispanic Americans. To honor the achievements of Hispanic Americans, the Congress, by Public Law 100–402, as amended, has authorized and requested the President to issue annually a proclamation designating September 15 through October 15 as ''National Hispanic Heritage Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 15 through October 15, 2005, as National Hispanic Heritage Month. I call upon public officials, educators, librarians, and all the people of the United States to observe this month with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18975
Filed 9–20–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7932 of September 16, 2005

Constitution Day and Citizenship Day, Constitution Week, 2005

By the President of the United States of America

A Proclamation

More than two centuries after our Founding Fathers gathered in 1787 in Philadelphia, our Nation continues to be guided by the Constitution they drafted.

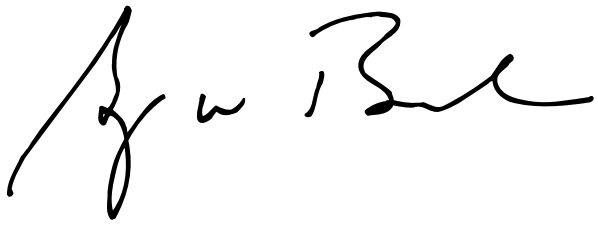
The Constitution of the United States reflects our ideals and establishes a practical system of government. It provides for three separate branches—the legislative, the executive, and the judicial—with defined responsibilities and with checks and balances among the branches. Under our Constitution, both the Federal Government and the State governments advance the will of the people through the people's representatives. To protect the rights of our citizens and maintain the rule of law, Article III of the Constitution provides for a judiciary of independent judges who have life tenure.

These fundamental principles—separation of powers, federalism, and an independent judiciary—have endured, and they have been essential to our Nation's progress toward equal justice and liberty for all. On Constitution Day and Citizenship Day and during Constitution Week, we celebrate the genius of our Constitution and reaffirm our commitment to its stated purposes: ''to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity.''

In remembrance of the signing of the Constitution and in recognition of the Americans who strive to uphold the duties and responsibilities of citizenship, the Congress, by joint resolution of February 29, 1952 (36 U.S.C. 106, as amended), designated September 17 as ''Constitution Day and Citizenship Day,'' and by joint resolution of August 2, 1956 (36 U.S.C. 108, as amended), requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 17, 2005, as Constitution Day and Citizenship Day, and September 17 through September 23, 2005, as Constitution Week. I encourage Federal, State, and local officials, as well as leaders of civic, social, and educational organizations, to conduct ceremonies and programs that celebrate our Constitution and reaffirm our rights and obligations as citizens of our great Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18976
Filed 9–20–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7933 of September 16, 2005

National Farm Safety and Health Week, 2005

By the President of the United States of America

A Proclamation

As stewards of our natural resources, farmers and ranchers play a crucial role in keeping our Nation strong. This year's theme for National Farm Safety and Health Week, ''Harvesting Safety and Health,'' encourages those in the agriculture industry to practice and promote safe working conditions and reminds all Americans of the vital contributions of farmers and ranchers to our country.

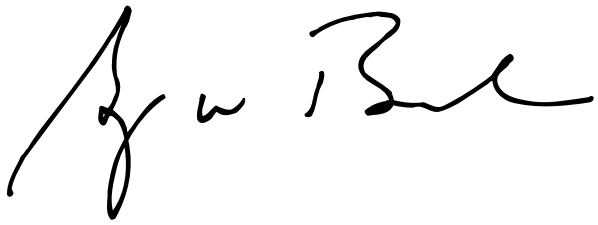
Our farming communities embody the American values of hard work, faith, love of family, and love of country. Their skill and dedication feed, clothe, and provide energy for Americans and others around the world.

Agricultural workers face one of the most hazardous work environments in America. Farmers and ranchers operate heavy machinery, work in inclement weather, and tend livestock. Because of these risks, taking safety precautions is vital for agricultural workers. By implementing preventive measures and increasing our knowledge of first aid, we can greatly reduce many hazards of farm and ranch labor. Utilizing safety features and keeping children from working or playing in potentially hazardous areas also can limit injuries and help farmers and ranchers protect their families.

Our farmers and ranchers help keep our Nation strong and advance the opportunities that come from freedom. During National Farm Safety and Health Week, we recognize the significant contributions of farmers and ranchers to our Nation and encourage the further development of work environments that will ensure their safety.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 18 through September 24, 2005, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to continue strengthening their commitment to promoting farm safety and health programs. I also urge all Americans to recognize the men and women cultivating our land who contribute to the vitality and prosperity of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–18977
Filed 9–20–05; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7934 of September 16, 2005

Family Day, 2005

By the President of the United States of America

A Proclamation

Families are a source of hope, stability, and love. On Family Day, we celebrate the special bonds that link children and parents, and we recognize the importance of parental involvement in the lives of their children. By providing guidance, support, and unconditional love, families help shape the character and future of our Nation.

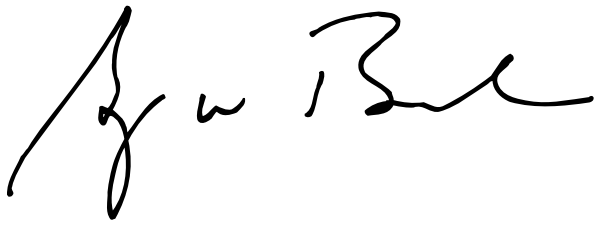
In a free and compassionate society, the public good depends upon the private character of our citizens. That character is formed and shaped from a child's earliest days through the love and guidance of family. Families help children understand the difference between right and wrong and the importance of making good choices. Regular family activities allow parents to be actively involved in the lives of their children and instill important values of honesty, compassion, and respect for others. By raising young people in a loving and secure environment, parents help them develop into successful adults and responsible citizens.

Parents and family are a bedrock of love and support, and my Administration is committed to strengthening families. My 2006 budget proposes $240 million for initiatives that promote responsible fatherhood and encourage healthy marriages. Through competitive grants to State-based programs and faith-based and community organizations, we are helping support their good work. As parents continue to raise healthy children, we can all help young people realize a bright and promising future.

Strong families are the cornerstone of a strong America, and the well-being of families is a shared priority for all Americans. As we support families, we help build a Nation of opportunity and hope.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 26, 2005, as Family Day. I call on the people of the United States to observe this day by spending time with family members and reaffirming the important relationship between parents and children and the vital role that families play in our society.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of September, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 804/P.L. 109–64

To exclude from consideration as income certain payments under the national flood insurance program. (Sept. 20, 2005; 119 Stat. 1997)

H.R. 3669/P.L. 109–65

National Flood Insurance Program Enhanced Borrowing Authority Act of 2005 (Sept. 20, 2005; 119 Stat. 1998)

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