AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

9–22–05 Thursday
Vol. 70 No. 183 Sept. 22, 2005

Pages 55513–55704

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

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

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

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

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

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

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

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

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

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

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

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

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

Single copies/back copies:

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

FEDERAL AGENCIES

Subscriptions:

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

FEDERAL REGISTER WORKSHOP

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

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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

3. The important elements of typical Federal Register documents.

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

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

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

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

Antitrust Division
NOTICES
National cooperative research notifications:
Microcontaminant Reduction Venture, 55629
Southwest Research Institute, 55629

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Housatonic River, CT, 55539–55541
M/V WILLIAM G. MATHER; transfer from municipal pier to Cleveland City Docks, OH, 55534–55535
San Francisco Bay et al., CA, 55536–55539
PROPOSED RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
San Francisco Bay et al., CA, 55607–55610

Commerce Department
See National Oceanic and Atmospheric Administration

Customs and Border Protection Bureau
NOTICES
Automation program test:
Automated Commercial Environment—
Periodic monthly payment statement process; bond rider requirement eliminated, 55623–55625

Defense Department
See Navy Department

Drug Enforcement Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55629–55630

Energy Department
NOTICES
Meetings:
Biological and Environmental Research Advisory Committee, 55619–55620

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Commercial and industrial solid waste incineration units; definitions, 55568–55581
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Illinois, 55541–55550
Kentucky, 55550–55559
Tennessee, 55559–55568
Air quality implementation plans; approval and promulgation; various States:
Utah; correction, 55663
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Illinois, 55610–55613
Kentucky, 55613
Tennessee, 55613–55614
NOTICES
Meetings:
Science Advisory Board, 55620–55621

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings; Sunshine Act, 55621

Farm Credit Administration
RULES
Farm credit system:
Conservators, receivers, and voluntary liquidations; receivership repudiation authorities, 55513–55516
NOTICES
Privacy Act:
Systems of records, 55621–55622

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 55517–55519, 55529–55531
Boeing, 55519–55529
Class D and E airspace, 55531–55533
Class E airspace, 55533
PROPOSED RULES
Airworthiness directives:
Construcciones Aeronauticas, S.A., 55602–55607
McDonnell Douglas, 55598–55601
NOTICES
Aeronautical land-use assurance; waivers:
Bolton Field Airport, OH, 55658
Airport noise compatibility program:
Noise exposure maps—
Potland International Jetport, ME, 55658–55659
Meetings:
Aging Transport Systems Rulemaking Advisory Committee, 55659–55660

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 55622

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Buckeye Union Insurance Co., 55661

Fish and Wildlife Service
RULES
Migratory bird hunting:
Late-season migratory bird hunting regulations; final frameworks, 55666–55689

PROPOSED RULES
Migratory bird hunting:
Alaska; 2006 subsistance harvest regulations, 55692–55699

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
NOTICES
Illegal Immigration Reform and Immigrant Responsibility Act of 1996; implementation:
Barriers and roads construction along U.S. international land border in California; legal requirements; waiver, 55622–55623

Interior Department
See Fish and Wildlife Service

Internal Revenue Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55661–55662

International Trade Commission
NOTICES
Import investigations:
Glycine from—
China, 55625
Reports and guidance documents; availability, etc.:
U.S. services trade, recent trends; 2006 report, 55625–55626

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
AGP Corn Processing, Inc., 55626
Massachusetts Bay Transportation Authority, 55627
Sewerage District No. 1 of Iberia Parish, 55627
Tropical Fruit, S.E., et al., 55627–55628
Union Corp., et al., 55628

Maritime Administration
RULES
Subsidized vessels and operators:
Maritime Security Program, 55581–55597

National Credit Union Administration
RULES
Organization, functions, and authority delegations:
Technical corrections, 55516–55517

National Oceanic and Atmospheric Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
2006 FY funds availability; omnibus notice, 55615–55616
Meetings:
Gulf of Mexico Fishery Management Council, 55616–55617
North Pacific Fishery Management Council, 55617
Pacific Fishery Management Council, 55617–55618
Western Pacific Fishery Management Council, 55618–55619

National Science Foundation
NOTICES
Environmental statements; notice of intent:
Seismic sources use in NSF-funded research by U.S. academic scientists; marine environment impact, 55630–55631
Meetings; Sunshine Act, 55631–55632

Navy Department
NOTICES
Meetings:
Naval Postgraduate School Board of Advisors to the President, 55619
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Southeastern Resources Management, LLC, et al., 55619

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list, 55513
NOTICES
Environmental statements; availability, etc.:
Portland General Electric Co., 55634–55635
Environmental statements; notice of intent:
AmerGen Energy Co., LLC, 55635–55637
Meetings:
Reactor Safeguards Advisory Committee, 55637–55638
Applications, hearings, determinations, etc.:
Omaha Public Power District, 55632–55633
R. E. Ginna Nuclear Power Plant, LLC, 55633–55634

Public Debt Bureau
See Fiscal Service

Presidential Documents
ADMINISTRATIVE ORDERS
Terrorism; continuation of national emergency with respect to persons who commit, threaten to commit, or support (Notice of Sept. 21, 2005), 55701–55703

Railroad Retirement Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 55638

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 55638–55639
Public Utility Holding Company Act of 1935 filings, 55639
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 55639–55641
Depository Trust Co., 55641–55642
International Securities Exchange, Inc., 55642–55643
National Association of Securities Dealers, Inc., 55643–55650
Philadelphia Stock Exchange, Inc., 55650–55655

Small Business Administration
NOTICES
Meetings:
Audit and Financial Management Advisory Committee, 55655–55656
Applications, hearings, determinations, etc.:
Harbert Mezzanine Partners SBIC II, L.P., 55655

Social Security Administration
NOTICES
Social security rulings and acquiescence rulings:
Gillet-Netting v. Barnhart; determining eligibility for children conceived by artificial means after insured individual's death, 55656–55657

State Department
NOTICES
Foreign Assistance Act; determinations:
United Nations Democracy Fund; assistance provision, 55657–55658

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
BNSF Railway Co., 55660
Railroad services abandonment:
CSX Transportation, Inc., 55660–55661

Transportation Department
See Federal Aviation Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Internal Revenue Service

Separate Parts In This Issue

Part II
Interior Department, Fish and Wildlife Service, 55666–55689

Part III
Interior Department, Fish and Wildlife Service, 55692–55699

Part IV
Executive Office of the President, Presidential Documents 55701–55703

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Executive Orders:

13224 (See Notice of September 21, 2005) 55703

Administrative Orders:

Notices:

Notice of September 21, 2005 55703

10 CFR

72 55513

12 CFR

627 55513
703 55516
790 55516
791 55516

14 CFR

39 (4 documents) 55517, 55519, 55524, 55529
71 (2 documents) 55531, 55533

Proposed Rules:

39 (3 documents) 55598, 55602, 55604

33 CFR

165 (3 documents) 55534, 55536, 55539

Proposed Rules:

165 55607

40 CFR

52 (5 documents) 55541, 55545, 55550, 55559, 55663
60 55568
81 (4 documents) 55541, 55545, 55550, 55559

Proposed Rules:

52 (4 documents) 55610, 55611, 55613
81 (4 documents) 55610, 55611, 55613

46 CFR

296 55581

50 CFR

20 55666

Proposed Rules:

92 55692

Rules and Regulations

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH75

List of Approved Fuel Storage Casks: NAC–UMS Revision 4, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of October 11, 2005, for the direct final rule that was published in the **Federal Register** on July 25, 2005 (70 FR 42485). This direct final rule amended the NRC's regulations to revise the NAC–UMS cask system listing to include Amendment No. 4 to Certificate of Compliance (CoC) No. 1015.

EFFECTIVE DATE: The effective date of October 11, 2005, is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These same documents may also be viewed and downloaded electronically via the rulemaking Web site (*http://ruleforum.llnl.gov*). For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *jmm2@nrc.gov.*

SUPPLEMENTARY INFORMATION: On July 25, 2005 (70 FR 42485), the NRC published a direct final rule amending its regulations in 10 CFR part 72 to revise the NAC-UMS cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 4 to CoC No. 1015. This amendment replaces the term ''zircaloy'' with the more generic term ''zirconium alloy'; revises the definitions of ''operable'' and ''site specific fuel''; revises vacuum drying pressure and time limits; revises short-term temperature limits and completion times for the heat removal system; clarifies the surface dose rate surveillance; adds a dissolved boron concentration option; deletes a redundant boron concentration administrative control; adds an alternate site-specific design basis earthquake analysis; and incorporates editorial and administrative changes. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on October 11, 2005. The NRC did not receive any comments that warranted withdrawal of the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 18th day of September, 2005.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 05–18914 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 627

RIN 3052–AC26

Title IV Conservators, Receivers, and Voluntary Liquidations; Receivership Repudiation Authorities

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) issues this final rule amending our regulations governing how the Farm Credit System Insurance Corporation (FCSIC), as receiver or conservator of a Farm Credit System (System) institution, will treat financial assets transferred by the institution in connection with a securitization or in the form of a participation. This final rule will resolve issues raised by Financial Accounting Standards Board (FASB) Statement No. 140, Accounting for Transfers and Servicing of Financial Assets and Extinguishment of Liabilities (SFAS 140). Under conditions described in the final rule, the FCSIC will not seek to recover or reclaim certain financial assets in exercising its authority to repudiate or disaffirm contracts pursuant to 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d). Additionally, with this final rule, the FCSIC will not seek to enforce the ''contemporaneous'' requirement of section 5.61(d) of the Farm Credit Act of 1971, as amended (Act) (12 U.S.C. 2277a–10(d)). The final rule is substantially identical to receivership rules issued by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).

EFFECTIVE DATE: This regulation will be effective 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434, or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective in this final rule is to give certainty to System institutions regarding how the FCSIC will treat qualifying participations and securitizations if the institution is subsequently placed in conservatorship or receivership. The rule will achieve this by ensuring that the FCSIC will not attempt to ''pull back'' the subject assets into the conservatorship or receivership estate if the transaction meets specified conditions.

There is nothing in this final rule that provides any System institutions with the authority to engage in any transaction that is not otherwise authorized.

II. Background

As discussed in the preamble to the proposed rule (see 70 FR 21685, April 27, 2005), under generally accepted accounting principles (GAAP), a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. This principle is set forth in the SFAS No. 140 issued by the FASB.[1] Under this principle, one of the conditions for determining that the transferor has surrendered control is that the assets have been isolated from the transferor, *i.e.*, put presumptively beyond the reach of the transferor, its creditors, a trustee in bankruptcy, or a receiver. This is known as the ''legal isolation'' condition.

Whether the legal isolation condition has been met is determined primarily from a legal perspective. This determination involves considerations of the kind of receivership into which the transferor may be placed and the powers of the receiver to reach assets that were transferred prior to its appointment. If the available evidence provides reasonable assurance that the transferred assets would be beyond the reach of the powers of a bankruptcy trustee or receiver for the transferor, then a determination that the transferred assets have been legally isolated is appropriate.

When the transferor is a System institution, the FCSIC may be appointed conservator or receiver. The FCSIC has authority to repudiate burdensome contracts under §§ 627.2725(b)(2), (b)(14) and 627.2780(b) and (d) of FCA regulations; and it can repudiate certain other contracts under section 5.61(d) of the Act.[2] Due to these provisions, the question becomes whether financial assets transferred in connection with a securitization or in the form of a participation would be beyond the reach of the FCSIC as conservator or receiver.

Under §§ 627.2725(b)(2) and 627.2780(d), the FCSIC may take any action it considers appropriate or expedient to carry on the business of the institution during the process of liquidation or during the conservatorship. Under § 627.2725(b)(14), the FCSIC, when acting as conservator or receiver of a System institution, has the power to disaffirm or repudiate any contract or lease to which the institution is a party, the performance of which the FCSIC determines to be burdensome. Repudiation of a contract relieves the FCSIC from performing any unperformed obligations remaining under the contract. Section 5.61(d) of the Act provides that no agreement that tends to diminish or defeat the FCSIC's interest in an asset acquired by the FCSIC as conservator or receiver is enforceable against the FCSIC unless the agreement meets certain requirements. One of those requirements is that the agreement must be executed, by the institution and by any person claiming an adverse interest under it, contemporaneously with the acquisition of the asset by the institution. This is referred to as the ''contemporaneous'' requirement. These provisions are discussed below.

III. Description of the Final Rule

This final rule will add a new § 627.2726 to the conservatorship and receivership provisions in part 627 of FCA's regulations. The rule will apply only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under GAAP, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as conservator or receiver, which is addressed by this rule. The final rule provides that, for these transfers, the FCSIC will not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) or (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a System institution in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FCSIC from performing any continuing obligations imposed by the securitization or participation. If the FCSIC, in order to terminate such continuing obligations or duties, seeks to repudiate an agreement or contract under which a System institution has transferred financial assets in connection with a securitization or in the form of a participation, the FCSIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The definitions in the final rule are limited to this rule only, and language has been added to the final rule to clarify this point. The definition of ''participation'' is specifically limited to participations that are ''without recourse'' to the selling or ''lead'' institution. ''Without recourse'' means that the participation must not be subject to any agreement that requires the selling or ''lead'' institution to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term ''without recourse'' will not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated. The final rule will not apply unless the System institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The final rule further provides that it will not be construed as waiving, limiting, or otherwise affecting the rights or powers of the FCSIC to take any action or to exercise any power not specifically limited by this section. Such rights or powers include, but are not limited to, any rights, powers or remedies of the FCSIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The final rule further provides that the FCSIC will not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a System institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

The final rule will apply to securitizations and participations engaged in by System institutions while the rule is in effect, even if the rule is later amended or repealed. Section 627.2726(g) provides that any repeal or amendment of the rule by the FCA will not apply to any transfer of financial assets made in connection with a securitization or participation that was in effect before such repeal or amendment. As a result of § 627.2726(g), where a transfer of financial assets in connection with a securitization or in the form of a participation is made by a System institution and the securitization or participation was in effect before any repeal or amendment of the rule by the FCA, such transfer

[1] SFAS 140 replaced SFAS 125 (which had covered the same issues and was identically titled) in September 2000. SFAS 140 revised the standards for accounting for securitizations and other transfers of financial assets and collateral and required certain disclosures, but it carried over most of the provisions of SFAS 125 without reconsideration. The FDIC receivership issues and its related rule 12 CFR 360.6, which are discussed later in this preamble, are described in paragraphs 157–160 of SFAS 140.

[2] *See* 12 CFR 627.2725(b)(2), (b)(14) and 627.2780(b) and (d), and 12 U.S.C. 2277a–10(d).

will continue to satisfy the legal isolation requirement notwithstanding the repeal or amendment.

The final rule makes a conforming change to § 627.2780(b) to clarify that the provisions of this final rule apply to a conservatorship as well as to a receivership.

IV. Comments

The FCA received no written comments on the proposed rule. The FCA adopts the rule as final with no substantive changes other than the change to the definitions section described above.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 627

Agriculture, Banks, banking, Claims, Rural areas.

■ For the reasons stated in the preamble, part 627 of chapter VI, title 12 of the Code of Federal Regulations is amended as follows:

PART 627—CONSERVATORS, RECEIVERS, AND VOLUNTARY LIQUIDATIONS

■ 1. The authority citation for part 627 is amended to read as follows:

Authority: Secs. 4.2, 5.9, 5.10, 5.17, 5.51, 5.58, 5.61 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2244, 2252, 2277a, 2277a–7, 2277a–10).

Subpart B—Receivers and Receiverships

■ 2. Add a new § 627.2726 to read as follows:

§ 627.2726 Treatment by the conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* For the purposes of this section, the following definitions apply:

Beneficial interest means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

Financial asset means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

Participation means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the ''lead'', to a buyer, known as the ''participant'', without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant due to a default on the underlying obligation.

Securitization means the issuance by a special purpose entity of beneficial interests:

(1) The most senior class of which at the time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations, or

(2) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933 (15 U.S.C. 77d), as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

Special purpose entity means a trust, corporation, or other entity demonstrably distinct from the Farm Credit institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The receiver shall not, by exercise of its authority to repudiate contracts under § 627.2725(b)(2) and (b)(14), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by a Farm Credit institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the ''legal isolation'' condition as it applies to institutions for which the FCSIC may be appointed as receiver which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the Farm Credit institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the receiver to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the institution in receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the receiver to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the receiver regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The receiver shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by a Farm Credit institution solely because such agreement does not meet the ''contemporaneous'' requirement of section 5.61(d) of the Act.

(g) This section may be repealed or amended by the Farm Credit Administration, but any such repeal or amendment shall not apply to any transfers of financial assets made in connection with a securitization or participation that was in effect before such repeal or modification.

Subpart C—Conservators and Conservatorships

■ 3. Amend § 627.2780(b) by adding a second sentence to read as follows:

§ 627.2780 Powers and duties of conservators.

* * * * *

(b) * * * The provisions of § 627.2726 shall also apply to the conservator of a Farm Credit institution.* * *

* * * * *

Dated: September 16, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–18892 Filed 9–21–05; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 703, 790, 791

Technical Corrections

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) Board is issuing a rule to make certain technical corrections. The rule corrects titles of some NCUA offices and reorganizes the section describing the central and regional office organization. The NCUA Board is also making a minor revision to its own rules of procedure to clarify when notation voting is appropriate.

DATES: This rule is effective September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Moisette Green, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The NCUA Board reorganized a few offices within the central office of the agency as a result of the fiscal year 2005 (FY05) budget review. The Board's goals included improving the efficiency of NCUA operations, clarifying central office functions and extending assistance to small credit unions.

As part of the reorganization, the Board reassigned some existing NCUA positions and resources to the Office of Credit Union Development and renamed it as the Office of Small Credit Union Initiatives. This change recognizes the important role small credit unions, which represent about one-half of all credit unions, play in the credit union movement and provides additional focus within NCUA on the problems small credit unions face.

The Board also restructured the Office of Strategic Program Support and Planning when it approved the FY05 budget. The Board reorganized this staff to achieve more effective operations and better respond to NCUA's emerging needs and renamed the office as the Office of Capital Markets and Planning to reflect its purpose and function more accurately.

Part 790 describes NCUA's organization. Due to the renaming of these offices, the Board revises §§ 790.2(b)(12) and (13) to delete the references to the ''Office of Credit Union Development'' and ''Office of Strategic Program Support and Planning.'' These references are replaced with ''Office of Small Credit Union Initiatives'' and ''Office of Capital Markets and Planning'' respectively. The Board also makes a conforming change to § 703.19. Accordingly, the Board revises §§ 703.19(c), 790.2(b)(12) and (13) to make this correction.

The Board also revises § 790.2(b)(4) to describe graphics as an example of the administrative services provided by the Office of the Chief Financial Officer instead of a responsibility of the Office of Public and Congressional Affairs.

Additionally, the Board has a policy of continually reviewing NCUA regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' NCUA Interpretive Rulings and Policy Statement (IRPS) 87–2, Developing and Reviewing Government Regulations. The NCUA staff's most recent review of NCUA's regulations revealed the need for a few minor updates and corrections.

The description of the NCUA Central Liquidity Facility (CLF) is currently placed within the description of the Office of Examination and Insurance. The CLF is an instrumentality of the United States established under Title III of the Federal Credit Union Act, 12 U.S.C. 1795–1795k, and should be described in a separate paragraph in § 790.2. Accordingly, the Board redesignates § 790.2(b)(5)(ii) as a new paragraph § 790.2(b)(15) to make this correction.

The NCUA Board has reviewed the rules governing its procedures in Part 791. Specifically, Board is revising § 791.4 to reflect when it may consider matters by notation voting. When the rule was approved in 1980, the Board described matters it would consider by notation voting with the word ''routine,'' intending to restrict the use of this method of acting. The Board continues to believe notation voting should not be used for substantive decisions of significant, broad impact on credit unions. To clarify the rule and provide the Board with additional flexibility, while complying the Government in the Sunshine Act, 5 U.S.C. 552b, the Board revises § 791.4(b)(1) by replacing the word ''routine'' with the words ''administrative or time sensitive.''

B. Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The amendments in this rule are technical rather than substantive or involve only agency rules governing internal procedure. NCUA finds good cause that notice and public comment are unnecessary under section 553(b)(B) of the Administrative Procedure Act (APA). 5 U.S.C. 553(b)(B). NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA. The rule will, therefore, be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities, those credit unions with less than ten million dollars in assets. This rule makes technical corrections and revises the Board's internal procedural rules, so it will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that this rule will 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, the NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This rule 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. The NCUA has determined that this rule 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

NCUA has determined that this rule will not affect family well-being within

the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

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

Mary Rupp,

Secretary of the Board.

■ Accordingly, the NCUA amends 12 CFR parts 703, 790, and 791 as follows:

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

■ 1. The authority citation for part 703 continues to read as follows:

Authority: 12 U.S.C. 1757(7), 1757(8), 1757(15).

§ 703.19 [Amended]

■ 2. In 12 CFR 703.19(c) remove the words ''Office of Strategic Program Support and Planning'' and add, in their place, the words ''Office of Capital Markets and Planning''.

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

■ 3. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, and 1795f.

§ 790.2 [Amended]

■ 4. Amend § 790.2 as follows:

■ a. In the table below, for 12 CFR 790.2(b), remove the title indicated in the left column from wherever it appears in the section, and add the title indicated in the right column:

Remove	Add
Office of Credit Union Development	Office of Small Credit Union Initiatives.
Office of Strategic Program Support and Planning	Office of Capital Markets and Planning.

■ b. Redesignate paragraph (b)(5)(i) as paragragh (b)(5), and paragraph (b)(5)(ii) as new paragraph (b)(15).

■ c. Add the word ''graphics;'' in the last sentence of paragraph (b)(4) after the word ''printing;'' and remove the last sentence of paragraph (b)(11).

PART 791—RULES OF NCUA BOARD PROCEDURE; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

■ 5. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

§ 791.4 [Amended]

■ 6. In 12 CFR 791.4(b)(1), remove the word ''routine'' and add, in its place, the words ''administrative or time sensitive, for example, enforcement or interagency actions requiring prompt Board action''.

[FR Doc. 05–18747 Filed 9–21–05; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22484; Directorate Identifier 2003–NM–270–AD; Amendment 39–14286; AD 2005–19–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–202, –223, –243, and –343 Airplanes; and Model A340–313 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 A330–202, –223, –243, and –343 airplanes; and certain Model A340–313 airplanes. This AD requires a one-time inspection for discrepancies of the attachment bolts of the windshield central retainer, and corrective actions if necessary. This AD results from a report indicating that, during production, the windshield central retainer may have been installed with attachment bolts that were too short, which prevented the thread of the bolt from fully engaging in the self-locking nut. We are issuing this AD to prevent loosened attachment bolts, which could result in loss of the windshield and consequent reduced structural integrity of the airplane.

DATES: Effective October 7, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 7, 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.

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:

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 A330–202, –223, –243, and –343 airplanes, and Model A340–313 airplanes. The windshield central retainer is attached with long-thread bolts of a certain length. During production on affected airplanes, the windshield central

retainer may have been installed with slightly shorter bolts having standard thread length. In that case, despite proper torquing, the bolt thread might not fully engage in the self-locking nut. Loosened attachment bolts, if not corrected, could result in loss of the windshield and consequent reduced structural integrity of the airplane.

Relevant Service Information

Airbus has issued Service Bulletins A330–56–3006 and A340–56–4006, both Revision 01, dated March 24, 2003. The service bulletins describe procedures for inspecting the windshield central retainer to measure the protrusion of the attachment bolts, and replacing inadequate bolts and their corresponding nuts. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. To ensure the continued airworthiness of these airplanes in France, the DGAC mandated the service information and issued French airworthiness directives 2003–123(B) R1 and 2003–124(B) R1, both dated April 16, 2003.

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 airplanes of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent loosened attachment bolts of the windshield central retainer, which could result in loss of the windshield and reduced structural integrity of the airplane. This AD requires accomplishing the actions specified in the service information described previously, except as discussed below.

Clarification of Inspection Terminology

The service bulletins refer to a ''detailed visual inspection'' for measuring the length of the attachment bolts. We have determined that the procedures in the service bulletins should be considered a ''detailed inspection.'' Note 1 in this AD defines this type of inspection.

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. In that event, the required actions would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of this AD to be $65 per airplane.

FAA's Determination of the Effective Date

No airplane affected by this AD is currently on the U.S. Register. Therefore, providing notice and opportunity for public comment is unnecessary before this AD is issued, and this AD may be made effective in less than 30 days after it is published in the **Federal Register**.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–22484; Directorate Identifier 2003–NM–270–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):

2005–19–21 Airbus: Amendment 39–14286. Docket No. FAA–2005–22484; Directorate Identifier 2003–NM–270–AD.

Effective Date

(a) This AD becomes effective October 7, 2005.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Airbus model—	As identified in Airbus service bulletin—
A330–202, –223, –243, and –343 airplanes	A330–56–3006, Revision 01, dated March 24, 2003.
A340–313 airplanes	A340–56–4006, Revision 01, dated March 24, 2003.

Unsafe Condition

(d) This AD results from a report indicating that, during production, the windshield central retainer may have been installed with attachment bolts that were too short, which prevented the thread of the bolt from fully engaging in the self-locking nut. We are issuing this AD to prevent loosened attachment bolts, which could result in loss of the windshield and consequent 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.

Inspection

(f) Within 6 months after the effective date of this AD, perform a detailed inspection of the windshield central retainer for discrepancies of the attachment bolts, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–56–3006 or A340–56–4006, both excluding Appendix 01, Revision 01, dated March 24, 2003; as applicable. If the protrusion of any attachment bolt is not within the limits specified in the service bulletin, replace the bolt and corresponding nut with new parts before further flight in accordance with the service bulletin.

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

Modification According to Previous Issue of Service Bulletin

(g) Inspecting the windshield central retainer, and doing applicable corrective actions, is also acceptable for compliance with the requirements of paragraph (f) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–56–3006 or A340–56–4006, both dated March 12, 2003; as applicable.

No Reporting Requirement

(h) Although Airbus Service Bulletins A330–56–3006 and A340–56–4006 specify sending an inspection report to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i)(1) 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.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(j) French airworthiness directives 2003–123(B) R1 and 2003–124(B) R1, both dated April 16, 2003, also address the subject of this AD.

Material Incorporated by Reference

(k) To perform the actions that are required by this AD, unless the AD specifies otherwise, you must use Airbus Service Bulletin A330–56–3006, excluding Appendix 01, Revision 01, dated March 24, 2003; or Airbus Service Bulletin A340–56–4006, excluding Appendix 01, Revision 01, dated March 24, 2003; 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 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 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18782 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21355; Directorate Identifier 2005–NM–037–AD; Amendment 39–14288; AD 2005–19–23]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes Powered by General Electric or Pratt & Whitney Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 767 series airplanes. That AD currently requires repetitive inspections to detect discrepancies of the eight aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions if necessary. That AD also provides an optional terminating action for the repetitive inspections.

This new AD adds repetitive inspections for cracks of the closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting, and related investigative and corrective actions if necessary. This AD also reduces the inspection interval of the upper tang of the outboard midspar fitting; and provides an optional terminating action for the repetitive inspections. This AD results from a report of a crack in a closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting; and the discovery of a crack in the lower tang of the midspar fitting under the cracked closeout angle. We are issuing this AD to prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

EFFECTIVE DATE: This AD becomes effective October 27, 2005.

The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, listed in the AD as of October 27, 2005.

On June 9, 2004 (69 FR 24947, May 5, 2004), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002.

On May 15, 2001 (66 FR 18523, April 10, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000.

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

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

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

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 supersedes AD 2004–09–14, amendment 39–13603 (69 FR 24947, May 5, 2004). The existing AD applies to certain Model 767 series airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32527). That NPRM proposed to continue to require repetitive inspections to detect discrepancies of the eight aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions if necessary. That NPRM also proposed to require repetitive inspections for cracks of the closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting, and related investigative and corrective actions if necessary. That NPRM also proposed to reduce the inspection interval of the upper tang of the outboard midspar fitting; and to provide an optional terminating action for the repetitive inspections.

Comments

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

Request To Remove Airplane Reference From Applicability

The airplane manufacturer requests that we remove the reference to Boeing Model 767–400ER series airplanes from the applicability of the NPRM. The commenter points out that these airplanes have improved corrosion resistant steel (CRES) mid-spar fittings.

We agree with the commenter. The Model 767–400ER series airplanes are not included in the effectivity of the Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005 (which was cited as the appropriate source of service information for doing the actions in the NPRM), but were inadvertently included in the applicability of the NPRM. We have changed the final rule to remove this model designation from the applicability.

Request To Include Inspection Requirements for Airplanes With CRES Repair Strap

The same commenter points out that some airplanes have had the closeout angle previously repaired by the addition of a CRES repair strap. This repair strap covers two aft-most bolts of the closeout angle at the midspar fitting. The commenter states that the repair strap prevents high-frequency eddy current inspections of the closeout angle. The commenter requests that the final rule include inspection requirements for these airplanes.

We partially agree with the commenter. We agree that additional inspections may be required for these airplanes. We disagree with including inspection requirements for these airplanes in the final rule. In accordance with 14 CFR 39.17, if the original airplane configuration is altered, modified, or repaired in any way that may affect the ability to accomplish the actions of an AD, the operator should apply for an alternative method of compliance (AMOC) through the FAA. Information about AMOCs is included in paragraph (q) of the final rule. We have not changed the final rule in this regard.

Explanation of Change Made to Paragraph (i)

We have simplified paragraph (i) of the final rule by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph of this AD for repair methods.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

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

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Option 1: Detailed inspection (required by AD 2004–09–14).	1	$65	None	$65, per inspection cycle.	263	N/A (depends on chosen option).
Option 2: HFEC inspection (required by AD 2004–09–14).	3	$65	None	$195, per inspection cycle.	263	N/A (depends on chosen option).
HFEC inspection (new proposed action).	4	$65	None	$260, per inspection cycle.	263	$68,380, 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 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 39–13603 (69 FR 24947, May 5, 2004) and by adding the following new airworthiness directive (AD):

2005–19–23 Boeing: Amendment 39–14288. Docket No. FAA–2005–21355; Directorate Identifier 2005–NM–037–AD.

Effective Date

(a) This AD becomes effective October 27, 2005.

Affected ADs

(b) This AD supersedes AD 2004–09–14.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005.

Unsafe Condition

(d) This AD was prompted by a report of a crack in a closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting; and the discovery of a crack in the lower tang of the midspar fitting under the cracked closeout angle. We are issuing this AD to prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

Compliance

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

Restatement of Requirements of AD 2004–09–14

Repetitive Inspections

(f) Except as provided by paragraph (g) of this AD, before the accumulation of 10,000 total flight cycles, or within 600 flight cycles after May 15, 2001 (the effective date of AD 2001–07–05, amendment 39–12170), whichever occurs later: Accomplish the inspections required by paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) Perform a detailed inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect cracking, in accordance with Part 1, ''Detailed Inspection,'' of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. If no cracking is detected, repeat the inspection thereafter at the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1—Detailed Inspection'' included in Figure 1 of the service bulletin.

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

(2) Perform a high frequency eddy current (HFEC) inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect discrepancies (cracking, incorrect fastener hole diameter), in accordance with Part 2, ''High Frequency Eddy Current (HFEC) Inspection,'' of the Accomplishment Instructions of the service bulletin. Accomplish the requirements specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable; and repeat the inspection thereafter at the applicable intervals specified in Table 2, ''Reinspection Intervals for Part 2—HFEC Inspection'' included in Figure 1 of the service bulletin.

(i) If no cracking is detected and the fastener hole diameter is less than or equal to 0.5322 inch, before further flight, rework the hole in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

(ii) If no cracking is detected and the fastener hole diameter is greater than 0.5322 inch, before further flight, accomplish the requirements specified in either paragraph (h)(1) or (h)(2) of this AD.

(g) For airplanes on which the two aft-most fasteners have been inspected in accordance with Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, prior to May 15, 2001: Perform the initial inspection of the four aft-most fasteners in accordance with paragraph (f) of this AD before the accumulation of 10,000 total flight cycles, or within 1,500 flight cycles after May 15, 2001, whichever occurs later.

Corrective Actions

(h) If any cracking is detected after accomplishment of any inspection required by paragraph (f) of this AD, before further flight, accomplish the requirements specified in either paragraph (h)(1) or (h)(2) of this AD.

(1) Accomplish the terminating action specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000; Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; or Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005. Accomplishment of this paragraph terminates the requirements of this AD. After the effective date of this AD, only Boeing Alert Service Bulletin 767–54A0101, Revision 4, may be used.

(2) Replace the midspar fitting of the strut with a serviceable part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat the applicable inspection thereafter at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD.

(i) If any discrepancies (cracking, incorrect fastener hole diameter) are detected during any inspection required by paragraph (f) or (p) of this AD, for which the service bulletin specifies that the manufacturer may be contacted for disposition of those repair conditions: Before further flight, accomplish the applicable related investigative and corrective actions (including fastener hole rework and/or midspar fitting replacement) using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

Additional Inspections

(j) Prior to the accumulation of 10,000 total flight cycles, or within 600 flight cycles after June 9, 2004 (the effective date of AD 2004–09–14), whichever occurs later: Perform the inspections specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, on all eight aft-most fastener holes or the four forward fastener holes in the group of eight aft-most fastener holes not inspected per paragraph (f)(1), (f)(2), or (g) of this AD. The inspection must be done per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; or Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005. Accomplishment of the applicable inspection on all eight aft-most fastener holes constitutes terminating action for the repetitive inspection requirements of paragraphs (f)(1), (f)(2), and (g) of this AD.

(k) If no cracking or discrepancy is detected during any detailed inspection required by paragraph (j) of this AD, repeat the inspections of all eight aft-most fastener holes thereafter at the applicable intervals specified in Table 1 of this AD.

(l) If no cracking or discrepancy is detected during any HFEC inspection required by paragraph (j) of this AD or by this paragraph of this AD: Perform the follow-on actions specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable, per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; or Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005; and repeat the inspections of all eight aft-most fastener holes thereafter at the applicable intervals specified in Table 1 of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVALS FOR ALL EIGHT AFT-MOST FASTENER HOLES

If—	Repetitive intervals—
(1) All eight aft-most fastener holes were inspected per paragraph (j) of this AD:.	At the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1,'' or Table 2, ''Reinspection Intervals for Part 2,'' as applicable. Both tables are included in Figure 1 of the applicable service bulletin. Within 1,500 flight cycles after the effective date of this AD, only the repetitive intervals in Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, may be used.
(2) Only the four forward fastener holes in the group of eight aft-most fastener holes were inspected per paragraph (j) of this AD:.	At the next scheduled repetitive inspection required by paragraph (f)(1) of (f)(2) of this AD, as applicable. Thereafter at the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1,'' or Table 2, ''Reinspection Intervals for Part 2,'' as applicable. Both tables are included in Figure 1 of the applicable service bulletin. Within 1,500 flight cycles after the effective date of this AD, only the repetitive intervals in Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, may be used.

Corrective Actions for Discrepancies

(m) If any cracking or discrepancy is detected during any inspection required by paragraphs (j), (k), or (l) of this AD, before further flight: Accomplish the corrective actions described in paragraph (h) of this AD, except as provided in paragraph (i) of this AD.

Service Bulletin Revisions

(n) Accomplishing the terminating action in paragraph (h)(1) of this AD before June 9, 2004, in accordance with the service bulletin revisions in Table 2 of this AD, is acceptable for compliance with the requirements of this AD. After the effective date of this AD, only Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, may be used for accomplishing the terminating action in paragraph (h)(1) of this AD.

TABLE 2.—SERVICE BULLETINS FOR TERMINATING ACTION

Service bulletin	Revision	Date
Boeing Alert Service Bulletin 767–54A0101	Original	September 23, 1999.
Boeing Service Bulletin 767–54A0101	2	January 10, 2002.

Inspections Accomplished per Previous Issues of Service Bulletin

(o) Inspections required by paragraphs (f) and (g) of this AD that are accomplished before June 9, 2004, in accordance with the service bulletin revisions in Table 3 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 3.—SERVICE BULLETINS FOR PREVIOUSLY ACCOMPLISHED INSPECTIONS

Boeing service bulletin	Revision	Date
Boeing Service Bulletin 767–54A0101	2	January 10, 2002.
Boeing Service Bulletin 767–54A0101	3	September 5, 2002.
Boeing Alert Service Bulletin 767–54A0101	4	February 10, 2005.

New Requirements of This AD

Inspections of Closeout Angle and Corrective Action

(p) For airplanes for which the ''Reinspection Intervals for Part 1,'' referenced in Table 1 of paragraph (l) of this AD apply: At the next applicable inspection, do an HFEC inspection for cracks of the closeout angle that covers the two aft-most fasteners in the lower tang of the midspar fitting and any related investigative and corrective actions, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005. Repeat the inspection at the applicable interval in Table 1, ''Reinspection Intervals for Part 1,'' in Figure 1 of the alert service bulletin.

Note 2: Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, refers to the Boeing service bulletins in the Table 4 of this AD as additional sources of service information for doing the terminating action in paragraph (h)(1) of this AD.

TABLE 4.—ADDITIONAL SOURCES OF SERVICE INFORMATION

Boeing service bulletin	Revision level	Date	Title
767–54–0052	Original	June 11, 1992	Nacelles/Pylons—Strut—Aft Lower Spar—Fastener Corrosion—Inspection and Replacement.
767–54–0061	2	November 23, 1999	Nacelles/Pylons—Wing-to-Strut Attach Fittings—Lower Spar Bushing Inspection and Replacement.
767–54–0069	2	August 31, 2000	Nacelles/Pylons—Midspar Fitting—Underwing Sideload Fitting—Fuse Pin Replacement and Wing Rework.
767–54–0072	Original	March 13, 1997	Nacelles/Pylons—Strut Attach Upper Link—Upper Link Inspection, Rework or Replacement.
767–54–0074	Original	March 27, 1997	Nacelles/Pylons—Strut Attach Fuse Pins—Upper link Fuse Pin Inspection/Replacement. Where this service bulletin refers to a cotter pin with part number (P/N) MS25665–374, the P/N should be MS24665–374. Where this service bulletin says, ''If no crack indication is found, reinstall the fuse pin,'' the correct statement is ''If no crack indication is found, continue to Step F.''
767–54–0080	1	May 9, 2002	Nacelles/Pylons—Pratt and Whitney Powered Airplanes—Nacelle Strut and Wing Structure Modification.
767–54–0081	1	February 7, 2002	Nacelles/Pylons—General Electric Powered Airplanes—Nacelle Strut and Wing Structure Modification.
767–54A0062	5	November 11, 2002	Nacelles/Pylons—Strut Attach Fuse Pins—Midspar Fuse Pin Inspection and Replacement.
767–54A0094	2	February 7, 2002	Nacelles/Pylons—Strut-to-Wing Attachment—Diagonal Brace Inspection/Rework/Replacement.
767–57–0063	1	November 30, 2000	Wings—Side Load Underwing Fitting—Inspection/Rework.

Note 3: Certain service bulletins referenced in Table 4 of this AD are related to the ADs listed in Table 5 of this AD.

TABLE 5.—OTHER RELEVANT RULEMAKING

AD	Applicability	Related Boeing service bulletin	AD requirement
AD 94–11–02, amendment 39–8918, (59 FR 27229, May 26, 1994).	All Boeing Model 767 series airplanes.	767–54A0062	Repetitive detailed visual and eddy current inspections to detect cracks of certain midspar fuse pins, and replacement of any cracked midspar fuse pin with a new fuse pin.
AD 99–07–06, amendment 39–11091 (64 FR 14578, March 26, 1999).	Certain Boeing Model 767 series airplanes.	767–54A0094	Repetitive inspections to detect cracking or damage of the forward and aft lugs of the diagonal brace of the nacelle strut; follow-on actions, if necessary; and an optional terminating action for the repetitive inspections. Superseded by AD 2000–07–05.
AD 2000–07–05, amendment 39–11659 (65 FR 18883, April 10, 2000).	Certain Boeing Model 767 series airplanes.	767–54A0094	Requires the previously optional terminating action of AD 99–07–06.

TABLE 5.—OTHER RELEVANT RULEMAKING—Continued

AD	Applicability	Related Boeing service bulletin	AD requirement
AD 2000–10–51, amendment 39–11770 (65 FR 37011, June 13, 2000).	Certain Boeing Model 767 series airplances.	767–54–0074	One-time inspection to determine whether certain bolts are installed in the side load underwing fittings on both struts, and various follow-on actions, if necessary.
AD 2001–02–07, amendment 39–12091 (66 FR 8085, January 29, 2001).	Certain Boeing Model 767 series airplanes powered by Pratt & Whitney engines.	767–54–0069, 767–54–0080, and 767–54–0094.	Modification of the nacelle strut and wing structure. Terminates certain requirements of AD 94–11–02.
AD 2001–06–12, amendment 39–12159 (66 FR 17492, April 2, 2001).	Certain Boeing Model 767 series airplanes powered by General Electric engines.	767–54–0069, 767–54–0081, and 767–54–0094.	Modification of the nacelle strut and wing structure. Terminates certain requirements of AD 94–11–02.
AD 2003–03–02, amendment 39–13026 (68 FR 4374, January 29, 2003).	All Boeing Model 767 series airplanes.	767–54A0062	Supersedes AD 94–11–02; Retains all requirements but reduces certain compliance times for certain inspections, expands the detailed and eddy current inspections, and limits the applicability.

Alternative Methods of Compliance (AMOCs)

(q)(1) The Manager, Seattle 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 2004–09–14, amendment 39–13603, are approved as AMOCs for the corresponding requirements of this AD.

(3) 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.

(4) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(r) You must use the service information identified in Table 6 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 6.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Revision level	Date
Boeing Service Bulletin 767–54A0101	1	February 3, 2000.
Boeing Service Bulletin 767–54A0101	3	September 5, 2002.
Boeing Alert Service Bulletin 767–54A0101	4	February 10, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 767–54A0101, Revision 4, dated February 10, 2005, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 9, 2004 (69 FR 24947, May 5, 2004), the Director of the Federal Register approved the incorporation by of Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002.

(3) On May 15, 2001 (66 FR 18523, April 10, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000.

(4) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18785 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–66–AD; Amendment 39–14289; AD 2005–19–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that currently requires repetitive pre-modification inspections to detect cracks in the forward support fitting of the number 1 and number 3 engines; and repair, if necessary. That AD also provides for an optional high frequency eddy current inspection, and, if possible, modification of the fastener holes; and various follow-on actions; which would terminate the repetitive pre-modification inspections. This amendment expands the area to be inspected; requires accomplishment of the previously optional (and subsequently revised) modification, which terminates certain repetitive inspections; and adds repetitive post-modification inspections to detect cracking of the fastener holes, and corrective actions if necessary. The actions specified by this AD are intended to prevent fatigue cracking of the forward support fitting of the number 1 and number 3 engines, which could result in failure of the support fitting and consequent separation of the engine from the airplane. This action is

intended to address the identified unsafe condition.

DATES: Effective October 27, 2005.

The incorporation by reference of Boeing Service Bulletin 727–54A0010, Revision 6, including Appendix A, dated August 23, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of October 27, 2005.

The incorporation by reference of Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 18, 1997 (62 FR 9359, March 3, 1997).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97–05–08, amendment 39–9952 (62 FR 9359, March 3, 1997), which is applicable to all Boeing Model 727 series airplanes, was published in the **Federal Register** on May 1, 2003 (68 FR 23231). The action proposed to continue to require repetitive pre-modification inspections to detect cracks in the forward support fitting of the number 1 and number 3 engines, and repair if necessary. The action also proposed to expand the area to be inspected; require accomplishment of the previously optional (and subsequently revised) modification, which would terminate certain repetitive inspections; and add repetitive post-modification inspections to detect cracking of the fastener holes, and corrective actions if necessary.

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.

Requests To Revise the Applicability

One commenter requests that the applicability of the proposed AD be revised to apply only to Boeing Model 727 airplanes equipped with fittings having part number (P/N) 65–18722–xx. The commenter states that its Model 727–100 fleet does not include any airplanes equipped with fittings having that P/N. Because it changed the affected fittings during a re-engine modification in accordance with Supplemental Type Certificate (STC) SA8472SW, it was granted an alternate method of compliance (AMOC) for AD 97–05–08. The commenter asserts that revising the proposed applicability will prevent operators that do not have the affected fittings installed from having to request an AMOC for the requirements of the proposed AD.

Another commenter requests that a statement be added to the proposed AD to exempt airplanes modified in accordance with STC SA4363NM. The commenter asserts that inclusion of this statement will make it perfectly clear to operators whether or not they are in compliance with the AD.

We acknowledge the commenters' concern and, as we state in paragraph (t)(2) of this AD, AMOCs previously approved according to AD 97–05–08 are acceptable for compliance with the corresponding requirements of this AD. These AMOCs address the commenter's concern. We find that no further clarifications are necessary and have made no change to the final rule in this regard.

Request To Add Language Specific to Airplanes With "Hush Kit" STCs Installed

A third commenter requests that specific language be included in the final rule stating that airplanes modified in accordance with STCs SA3993NM, SA4833NM, SA5839NM, and ST00350AT may be inspected and modified in accordance with Boeing Service Bulletin 727–54A0010, Revision 6, without change. (Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, was referenced in the proposed AD as the appropriate source of service information for accomplishing the new actions). These STCs install noise suppression modification equipment (hush kits) on Model 727 airplanes. The commenter states that including this information in the AD, in lieu of making operators request AMOCs, will avoid confusion among operators with airplanes equipped with these STCs. The commenter submitted substantiating data to support its request.

We do not agree. The static strength data analysis of the affected structure submitted was not sufficient to show that the commenter's request would result in an acceptable level of safety. Damage tolerance assessment is needed to determine if the inspections and modifications described in Boeing Service Bulletin 727–54A0010, Revision 6, are appropriate for airplanes modified in accordance with these STCs. In this case, the ability to inspect the affected area and changes in fatigue stress levels need to be addressed. Additionally, the inspections and modifications specified in the service bulletin specifically address only affected original equipment manufacturer configurations. However, as we explained previously, we will consider requests for AMOCs submitted with sufficient technical justification to support the request. We have made no change to the final rule regarding this issue.

Request To Change the Method of Inspection

Another commenter, the manufacturer, requests that we revise paragraphs (d)(1) and (d)(3) of the proposed AD to revise the method of inspection. Specifically, the commenter recommends revising "* * * If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and perform a general visual inspection to detect cracking * * *" to read "* * * If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and perform a HFEC inspection to detect cracking * * *." The commenter asserts that the high frequency eddy current (HFEC) inspection is a better method than a surveillance inspection and will provide an adequate level of safety by enabling operators to find small cracks.

We partially agree with the commenter. We find that an HFEC inspection should be accomplished after removal of corrosion. However, we do not agree that it is necessary to revise paragraphs (d)(1) and (d)(3) of this final rule as requested. Paragraphs (d)(1) and (d)(3) require any corrosion found to be removed in accordance with Figure 5 of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Step 5 of Figure 5 of the service bulletin includes procedures for doing an HFEC inspection for cracks and repairing any cracks found once the corrosion has been identified and removed from the affected area. The general visual inspection required by paragraphs (d)(1) and (d)(3) follows the instructions given in Figure 1, Step 2, of the service bulletin. We find that no change to the final rule is necessary regarding this issue.

Request To Refer Specifically to Post-Modification Inspections

The same commenter also requests that paragraph (m) of the proposed AD be revised to refer to the post-modification inspections in Revision 5 of Boeing Alert Service Bulletin 727–54A0010, dated February 15, 2001. Specifically, the commenter recommends revising ''* * * Inspections done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, are acceptable for compliance with the corresponding inspection requirements of this paragraph * * *.'' to ''* * * Inspections done before the effective date of this AD in accordance with Part III of the Accomplishment Instructions of Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, are acceptable for compliance with the corresponding inspection requirements of this paragraph * * *.'' The commenter believes that, for airplanes that have accomplished the modification, only the repeat post-modification inspection requirements of Revision 5 of the service bulletin provide an equivalent level of safety for the fleet.

We agree with the request for the reason provided by the commenter. It was our intent to refer specifically to Part III of the Accomplishment Instructions of Revision 5 of the service bulletin in paragraph (m). Therefore, we have revised paragraph (m) of this final rule to specifically refer to Part III of the Accomplishment Instructions of Revision 5 of the service bulletin for accomplishment of post-modification inspections done before the effective date of the AD.

Explanation of Additional Changes to the Proposed AD

Boeing has received a Delegation Option Authorization (DOA). We have revised this final rule to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER). Accordingly, we have added paragraph (t)(3) to this final rule and revised the wording of paragraphs (h)(1) and (i) of this AD. We have also revised the wording of paragraph (t)(1) of this final rule (specified as paragraph (s)(1) in the proposed AD) for reasons discussed under ''Changes to 14 CFR part 39/Effect on the AD.''

Because the language in Note 6 of the proposed AD is regulatory in nature, that note has been redesignated as paragraph (r) of this final rule. We have re-identified subsequent notes and paragraphs accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and AMOCs. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material, except for the revisions to certain language discussed previously.

Change to Labor Rate Estimate and Airplane Fleet Data

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

We have also revised the cost impact information to more accurately describe the number of airplanes of the affected design in the current worldwide and U.S. fleets.

Cost Impact

There are approximately 1,009 airplanes of the affected design in the worldwide fleet. The FAA estimates that 587 airplanes of U.S. registry will be affected by this AD.

We provide the following cost estimates for this AD:

Action	Work hours	Average labor rate per hour	Cost of parts	Cost per airplane	Cost for the U.S. fleet
AD 97–05–08 inspections, per inspection cycle.	2	$65	$0	$130	$76,310, per inspection cycle.
Inspections before structural rework, per inspection cycle.	14	65	0	910	534,170, per inspection cycle.
Structural rework	7	65	7,875	8,330	4,889,710.
Inspections after structural rework, per inspection cycle.	12	65	0	780	457,860, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the 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.

Regulatory Impact

The regulations adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (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. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–9952 (62 FR 9359, March 3, 1997), and by adding a new airworthiness directive (AD), amendment 39–14289, to read as follows:

2005–19–24 Boeing: Amendment 39–14289. Docket 2002–NM–66–AD. Supersedes AD 97–05–08, Amendment 39–9952.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (t)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the forward support fitting of the number 1 and number 3 engines, which could result in failure of the support fitting and consequent separation of the engine from the airplane, accomplish the following:

Restatement of Requirements of AD 97–05–08

Inspections

(a) Within 100 days or 600 flight cycles after March 18, 1997 (the effective date of AD 97–05–08, amendment 39–9952), whichever occurs first, accomplish paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997.

(1) Perform a visual inspection to detect cracks of the upper and lower flanges, and the vertical web of the forward support fitting of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(2) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the forward flange of the support fitting adjacent to the collars of two fasteners of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

(3) Perform a detailed inspection to detect cracks of the upper and lower flanges adjacent to six fasteners of the fitting of the number 1 and number 3 engines, in accordance with Part 1—Pre-Modification Inspections of the Accomplishment Instructions of the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(b) If no crack is detected during the inspections required by paragraph (a) of this AD, repeat those inspections thereafter at intervals not to exceed 100 days or 600 flight cycles, whichever occurs first, until the initial inspections required by paragraph (d) of this AD have been accomplished.

(c) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair the forward support fitting in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

New Requirements of This AD

Note 3: Where there are differences between the service bulletin and this AD, this AD prevails.

Inspections: All Airplanes

(d) For all airplanes: Within 600 flight cycles or 100 days after the effective date of this AD, whichever occurs first, inspect the forward support fitting of the number 1 and number 3 engines, as specified in paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(5) of this AD, in accordance with Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of these initial inspections terminates the inspection requirements of paragraphs (a) and (b) of this AD.

(1) Perform a general visual inspection to detect corrosion and cracking of the fittings in areas inboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion by accomplishing all of the actions in and in accordance with Figure 5 of the service bulletin, and then perform a general visual inspection to detect cracking of the area, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Perform an HFEC inspection to detect cracking of the upper and lower horizontal flanges and post tangs of the fittings from inside the airplane, in accordance with Figure 1 of the service bulletin.

(3) Perform a general visual inspection to detect cracking and corrosion of the fittings in areas outboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion by accomplishing all of the actions in and in accordance with Figure 5 of the service bulletin, and perform a general visual inspection to detect cracking of the area, in accordance with the service bulletin.

(4) Perform a detailed inspection to detect cracking and corrosion of the web in areas outboard of the side of the body, in accordance with Figure 1 of the service bulletin. If any corrosion is found, before further flight, remove the corrosion in accordance with Figure 5 of the service bulletin, and perform thickness measurements and detailed and HFEC inspections of the vertical web inboard and outboard of the side of the body to detect corrosion and cracking, in accordance with Figure 2 of the service bulletin. If the web thickness is less than 0.130 inch, do paragraph (i) of this AD.

(5) Perform detailed and HFEC inspections to detect cracking of the upper and lower horizontal flanges at the side of the body, in accordance with Figure 1 of the service bulletin.

Additional Inspections: Group 2 Airplanes

(e) For Group 2 airplanes, as identified in Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001: Within 600 flight cycles or 100 days after the effective date of this AD, whichever occurs first, inspect the forward support fitting of the number 1 and number 3 engines at the

firewall to detect cracking, as specified in paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD, in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(1) Perform a detailed inspection to detect cracking of the aft side of the upper horizontal flange, in accordance with Figure 1 of the service bulletin.

(2) Perform a low frequency eddy current (LFEC) or an open hole HFEC inspection to detect cracking of the aft side of the upper horizontal flange, in accordance with Figure 1 of the service bulletin.

(3) Perform a detailed inspection to detect cracking of the aft side of the lower horizontal flange, in accordance with Figure 1 of the service bulletin.

(4) Perform an HFEC inspection to detect cracking of the aft side of the lower horizontal flange, in accordance with Figure 1 of the service bulletin.

No Cracking Found: Follow-on Inspections, All Airplanes

(f) For all airplanes: If no cracking is found during any inspection required by paragraph (d) of this AD, repeat the applicable inspections within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, until the modification required by paragraph (j) of this AD has been done.

No Cracking Found: Additional Follow-on Inspections, Group 2 Airplanes

(g) For Group 2 airplanes only: If no cracking is found during the inspections required by paragraph (e) of this AD, repeat the inspections on the upper and lower outboard flange at the firewall within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001.

(1) Repeat the inspections of the upper outboard flange at the firewall until the modification required by paragraph (j) of this AD has been done.

(2) Repeat the inspections of the lower outboard flange at the firewall indefinitely. There is no terminating action for the inspections of this area.

Note 5: Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, does not provide instructions for modifying the fastener holes of the lower outboard flange at the firewall.

Cracking Found: Any Airplane

(h) For any airplane: If any crack is found during any inspection required by paragraph (d), (e), (f), or (g) of this AD, before further flight, do the actions specified in either paragraph (h)(1) or (h)(2) of this AD.

(1) Replace or repair the fitting in accordance with a method approved by the Manager, Seattle ACO; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD; or

(2) Do the modification specified in paragraph (j) of this AD.

Web Thickness Less Than 0.130 Inch: Any Airplane

(i) For any airplane: If the web thickness measured during accomplishment of paragraph (d)(4) of this AD is less than 0.130 inch, before further flight, replace or repair the fitting in accordance with a method approved by the Manager, Seattle ACO; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Modification

(j) Except as required by paragraphs (h), (i), and (q) of this AD: Within 3,000 flight cycles or 24 months after the effective date of this AD, whichever occurs first, modify the fastener holes, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of the modification terminates the repetitive inspections required by paragraphs (f) and (g)(1) of this AD.

Modification in Accordance With Prior Service Bulletin Revision

(k) For airplanes modified before the effective date of this AD in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997: Paragraph (j) of this AD requires accomplishment of additional procedures in accordance with Revision 6 of the service bulletin. To the extent that certain modification procedures were performed in accordance with Revision 4, those actions do not need to be repeated when performing the modification required in paragraph (j) of this AD.

(l) A modification done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, is acceptable for compliance with the requirements of paragraph (j) of this AD.

Post-Modification Inspections

(m) Inspect as specified in paragraphs (m)(1), (m)(2), and (n) of this AD, as applicable, to detect cracking and corrosion, in accordance with Part III of the Accomplishment Instructions of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Inspections done before the effective date of this AD in accordance with Part III of Boeing Alert Service Bulletin 727–54A0010, Revision 5, dated February 15, 2001, are acceptable for compliance with the corresponding inspection requirements of this paragraph.

(1) For all airplanes: Do an open hole HFEC inspection of the fastener holes in the forward support fitting of the number 1 and number 3 engines, at the locations shown in Figure 4 of the service bulletin.

(2) For Group 2 airplanes: Do an open hole HFEC inspection of the fastener holes in the forward support fitting of the number 1 and number 3 engines, at the locations shown in Figure 4 of the service bulletin.

(n) Perform the inspections specified in paragraph (m) of this AD at the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD.

(1) Within 3,000 flight cycles or 24 months, whichever occurs first, after accomplishment of the modification required by paragraph (j) of this AD.

(2) Within 600 flight cycles or 100 days, whichever occurs first, after the effective date of this AD.

Follow-On/Corrective Actions

(o) If no cracking is found during any inspection required by paragraph (m) of this AD: Repeat the inspections specified in paragraph (m) of this AD thereafter within the applicable intervals specified in paragraph 1.E., Table 1, of Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001. Accomplishment of the modification specified in paragraph (j) of this AD does not terminate the requirement to repetitively perform the post-modification inspections specified in Part III of the service bulletin.

(p) If any cracking is detected during any inspection required by paragraph (m) of this AD: Before further flight, repair in accordance with Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001; except as required by paragraph (q) of this AD.

Exception to Corrective Actions

(q) Where Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, specifies to contact Boeing for appropriate action: Before further flight, replace or repair the fitting in accordance with a method approved by the Manager, Seattle ACO; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Reporting Not Required

(r) Boeing Service Bulletin 727–54A0010, Revision 6, dated August 23, 2001, recommends that operators report inspection results to the manufacturer; however, this AD does not contain this requirement.

Parts Installation

(s) As of the effective date of this AD, no person may install a forward support fitting on any airplane, unless it has been inspected and modified, as applicable, in accordance with the requirements of this AD.

Alternative Methods of Compliance

(t)(1) The Manager, Seattle 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 previously approved according to AD 97–05–08 are acceptable for

compliance with the corresponding requirements of this AD.

(3) 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 DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(u) Special flight permits may be issued according to sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(v) Unless otherwise specified in this AD, the actions must be done in accordance with Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997; and Boeing Service Bulletin 727–54A0010, Revision 6, including Appendix A, dated August 23, 2001; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 727–54A0010, Revision 6, including Appendix A, dated August 23, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Bulletin 727–54A0010, Revision 4, dated January 30, 1997, was approved previously by the Director of the Federal Register as of March 18, 1997 (62 FR 9359, March 3, 1997).

(3) Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Effective Date

(w) This amendment becomes effective on October 27, 2005.

Issued in Renton, Washington, on September 8, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18783 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22486; Directorate Identifier 2004–NM–219–AD; Amendment 39–14287; AD 2005–19–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–322, –341, and –342 Airplanes; and Airbus Model A340–200 and –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 A330–322, –341, and –342 airplanes, and Model A340–200 and –300 series airplanes. This AD requires modifying the left and right ram air outlets of the two air conditioning packs. The modification includes replacing the old air outlet assembly with a new air outlet assembly, and modifying the web. This AD results from a report of fatigue cracks that initiated in the duct structure of the ram air outlet, which is adjacent to the hydraulics compartment. We are issuing this AD to prevent fatigue cracks in the duct structure of the ram air outlet, which could lead to hot air damage and consequent loss of function of the hydraulics systems.

DATES: Effective October 7, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of October 7, 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.

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

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist for certain Airbus Model A330–322, –341, and –342 airplanes, and Model A340–200 and –300 series airplanes. The DGAC advises that fatigue cracks have been found that initiated in the duct structure of the ram air outlet, which is adjacent to the hydraulics compartment. These fatigue cracks were found on airplanes that had been modified with an ''adaptation solution'' that was intended to prevent cracks and provide better thermal insulation. However, analyses showed that the adaptation solution did not prevent cracks that initiate after the 12,000 flight-cycle threshold. Cracks in the duct structure could propagate, and certain rivet heads could shear from the inside. Either condition could cause the air outlet to rupture and lead to hot air being blown into the hydraulics bay. This condition, if not corrected, could result in hot air damage and consequent loss of function of the hydraulics systems.

Relevant Service Information

Airbus has issued the service bulletins listed in the following table.

AIRBUS SERVICE BULLETINS

Airbus service bulletin—	Revision	Dated	For model—
A330–53–3132	02	April 26, 2004	A330–322, –341, and –342 airplanes.
A340–53–4139	02	April 26, 2004	A340–200 and –300 series airplanes

The service bulletins describe procedures for modifying the left and right ram air outlets of the two air conditioning packs to provide improved thermal insulation and fatigue resistance. The modification includes replacing the old air outlet assembly with a new air outlet assembly, and modifying the web. 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 F–2004–050 and F–2004–051, both dated April 14, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to prevent fatigue cracks in the duct structure of the ram air outlet, which could lead to hot air damage and consequent loss of function of the hydraulics systems. 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.

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
Modification	32	$65	$55,710	$57,790

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–2005–22486; Directorate Identifier 2004–NM–219–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):

2005–19–22 Airbus: Amendment 39–14287. Docket No. FAA–2005–22486; Directorate Identifier 2004–NM–219–AD.

Effective Date

(a) This AD becomes effective October 7, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A330–322, –341, and –342 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; as identified in Airbus Service Bulletin A330–53–3132, Revision 02, dated April 26, 2004, and Airbus Service Bulletin A340–53–4139, Revision 02, dated April 26, 2004, as applicable.

Unsafe Condition

(d) This AD results from a report of fatigue cracks that initiated in the duct structure of the ram air outlet, which is adjacent to the hydraulics compartment. The FAA is issuing this AD to prevent fatigue cracks in the duct structure of the ram air outlet, which could lead to hot air damage and consequent loss of function of the hydraulics systems.

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

Modification

(f) Before the airplane accumulates 12,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later: Modify the ram air outlet ducts of the two air conditioning packs in accordance with the applicable service bulletin in Table 1 of this AD.

TABLE 1.—AIRBUS SERVICE BULLETINS

Model	Airbus service bulletin	Revision	Date
A330–322, –341, and –342 airplanes	A330–53–3132	02	April 26, 2004.
A340–211, –212, –213, –311, –312, and –313 airplanes	A340–53–4139	02	April 26, 2004.

Actions Accomplished in Accordance With Previous Issues of Service Bulletins

(g) Actions accomplished in accordance with the service bulletins listed in Table 2 of this AD are acceptable for compliance with the corresponding action in this AD.

TABLE 2.—PREVIOUS ISSUES OF SERVICE BULLETINS

Airbus service bulletin	Revision	Date
A330–53–3132	01	December 8, 2003.
A340–53–4139	Original	July 25, 2003.
A340–53–4139	01	December 8, 2003.

Alternative Methods of Compliance (AMOCs)

(h)(1) 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.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Related Information

(i) French airworthiness directives F–2004–050 and F2004–051, both dated April 14, 2004, also address the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus Service Bulletin A330–53–3132, Revision 02, dated April 26, 2004; and Airbus Service Bulletin A340–53–4139, Revision 02, dated April 26, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact 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 13, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18781 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20643; Airspace Docket No. 05–AAL–13]

Establishment of Class D Airspace; and Revision of Class E Airspace; Big Delta, Allen Army Airfield, Fort Greely, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class D airspace and revises Class E airspace at Big Delta, Allen Army Airfield (BIG) on Ft. Greely, Alaska. This action was taken at the request of the United States Army to enable them to establish the appropriate airspace to open an Airport Traffic Control Tower (ATCT) at BIG to support operations of the U.S. Army Space and Missile Defense Command. This action also enlarges Class E Airspace from 700 ft. above the surface to the point at which it is sufficient to contain aircraft executing standard instrument approach procedures (SIAP). The new BIG ATCT is being established to provide airport traffic control service to aircraft operating at BIG due to increased airport operations caused by an expanded homeland security mission at Ft. Greely.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Monday, April 18, 2005, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace and to revise Class E airspace from the surface at Big Delta, Allen Army Airfield, Fort Greely, Alaska (70 FR 20096). The action was proposed in order to add Class D airspace sufficient in size to provide airport traffic control at BIG. The United States Army Space and Missile Defense Command is the managing agency for BIG. They plan to open a new ATCT on December 22, 2005. The United States Army is taking this action in order to provide airport traffic control due to an increase in airport traffic caused by an expanded homeland security mission at Ft. Greely. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One letter was received with comments.

The commenter, Alaska Airmen's Association, requested an exclusion corridor, to the west of BIG, through Class D airspace at and below 500 ft. above ground level (AGL), for aircraft landing at Delta Junction Airport (D66). The FAA has considered the Alaska Airmen's Association request and agrees that a low altitude exclusion area to allow access to D66, to and from the northwest, without communication with BIG ATCT during visual flight rules (VFR) conditions is acceptable. When conditions are below basic VFR (1,000 ft. ceiling and/or 3 miles visibility) a Special VFR Clearance will still be required within Class E or D airspace. D66 is contained within Class E airspace extending from the surface upward to the base of Class D airspace.

The Alaska Airmen's Association also requested an exclusion corridor from Donnelly Dome to the Big Delta Very High Frequency Omni-directional Radio Range (BIG) 260 radial at 10 nautical miles (nm), or, if this is not feasible, an exclusion area through Class D airspace along the Richardson Highway under 500 AGL from the BIG 160 radial at 5 nm direct to BIG 260 radial at 10 nm. The FAA has considered this proposal. The first option, an exclusion corridor from Donnelly Dome to the BIG 260 radial at 10 nm, will not be feasible because this routing would require the U.S. Army to discontinue use of Restricted Area 2202A (R2202A) within the confines of the proposed corridor. U.S. Army has informed the FAA that the airspace currently designated as R2202 cannot be made available for use as a non-radio corridor for aircraft during periods when R2202A is active without impacting training and testing negatively. As to the second option proposed, for a no-radio route from the BIG 160 radial at 5 nm to the BIG 260 at 10 nm, the close proximity of this proposed corridor to aircraft operating to/from Allen Army Airfield, and the security issues associated with homeland defense activities at Fort Greely preclude approval.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The airspace area designated as Class D is published in paragraph 5000 of FAA order 7400.9N, *Airspace Designations and Reporting Points,* dated September 1, 2005 and effective September 16, 2005 which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as surface areas are published in paragraph 6002 and 6004 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9N, *Airspace Designations and Reporting Points*, dated September 1, 2005 and effective September 16, 2005 which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be revised subsequently in the Order.

The Rule

This rule establishes Class D airspace, and revises Class E airspace at BIG, Ft. Greely, Alaska. Class E airspace from the surface is incorporated into the rule to ensure that D66 remains within controlled airspace extending upwards from the surface. The BIG ATCT will operate continuously. Class E airspace that is an extension to the Class D airspace from the surface is revised to align with the new Class D airspace and is enlarged to encompass that area needed to provide air traffic control services to aircraft executing standard instrument approach procedures to BIG. The intended effect of this rule is to provide adequate controlled airspace for the BIG ATCT to provide airport traffic control services to VFR and Instrument Flight Rule (IFR) aircraft at BIG, Fort Greely, Alaska.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class D airspace sufficient in size to provide airport

traffic control services, and Class E airspace sufficient to contain aircraft executing standard instrument approach procedures at BIG, Alaska, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of 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 5000 Class D Airspace.

* * * * *

AAL AK D Big Delta, AK [New]

Big Delta, Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)
Delta Junction Airport
(Lat. 64°03′02″ N., long. 145°43′02″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 6.3-mile radius of the Allen AAF; excluding the portion within the boundary of restricted area 2202A, and excluding that portion at and below 700 feet above ground level from a point one-half mile south of the Delta Junction Airport (D66) extending via the 090 bearing to 1 mile east of the Alaska Highway and via the 270 bearing to 1 mile west of the Delta River; thence northwest parallel to the Alaska Highway and the Delta River, to the boundary of Class D airspace.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Area.

* * * * *

AAL AK E2 Big Delta, AK [Revised]

Big Delta, Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

Within a 6.3-mile radius of the Allen AAF; excluding that portion within Class D airspace and excluding the portion within the boundary of restricted area 2202A

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or E Surface Area.

* * * * *

AAL AK E4 Big Delta, AK [New]

Big Delta, Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

That airspace extending upward from the surface within 3 miles north and 2.6 miles south of the Big Delta VORTAC 039° radial extending from the 6.3-mile radius of the Allen AAF to 10.3 miles northeast of the airport.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet of More Above the Surface of the Earth.

* * * * *

AAL AK E5 Big Delta, AK [Revised]

Big Delta, Allen AAF, AK
(Lat. 63°59′40″ N., long. 145°43′18″ W.)
Big Delta VORTAC
(Lat. 64°00′16″ N., long. 145°43′02″ W.)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Allen AAF, excluding the portion within the boundary of restricted area 2202A; and within 3 miles north and 2.6 miles south of the Big Delta VORTAC 039° radial extending from the 8.6-mile radius of the Allen AAF to 10.3 miles northeast of the airport excluding Class D airspace.

* * * * *

Issued in Anchorage, AK, on September 14, 2005.

Michael A. Tarr,

Acting Area Director, Alaska Flight Service Operations.

[FR Doc. 05–18931 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21448; Airspace Docket No. 05–AAL–16]

Establishment of Class E Airspace; Golovin, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace description contained in a Final Rule that was published in the **Federal Register** on Tuesday, September 13, 2005 (70 FR 53917). Airspace Docket No. 05–AAL–16.

EFFECTIVE DATE: 0901 UTC, December 22, 2005

FOR FURTHER INFORMATION CONTACT: Gary Rolf, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *gary.ctr.rolf@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 05–18155, Airspace Docket No. 05–AAL–16, published on Tuesday, September 13, 2005 (70 FR 53917), established Class E airspace at Golovin, AK. An error was discovered in the airspace description that misidentified the airfield location. This action corrects that error.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the airspace description of the Class E airspace published in the **Federal Register,** Tuesday, September 13, 2005 (70 FR 53917), (FR Doc 05–18155, page 53918, column 1) is corrected as follows:

PART 71—[AMENDED]

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Golovin, AK [Corrected]

Golovin Airport, AK
(Lat. 64°33′02″ N., Long. 163°00′26″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Golovin Airport, and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of Lat. 64°43′47″ N., Long. 163°15′17″ W and a 30-mile radius of Lat. 64°17′57″ N., Long. 163°01′41″ W.

* * * * *

Issued in Anchorage, AK, on September 14, 2005.

Michael A. Tarr,

Acting Area Director, Alaska Flight Service Operations.

[FR Doc. 05–18932 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–05–126]

RIN 1625–AA00

Safety Zone; Transfer of M/V WILLIAM G. MATHER, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone for the transfer of the M/V MATHER from the Municipal Pier to Cleveland City Docks. This safety zone is intended to manage vessel traffic in order to provide for the safety of life and property on navigable waters during the event.

DATES: This rule is in effect from 10 a.m. (local) through 11 a.m. (local) on September 24, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket CGD09–05–126 are part of this docket are available for inspection or copying at MSU Cleveland, 1055 East 9th Street, Cleveland, OH 44114 between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, at (216) 937–0128.

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. The exact date of the event was not known with sufficient time to allow for the publication of an NPRM followed by an effective date before the event.

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**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

This safety zone is necessary to protect the participants and spectator vessels during the transfer of the M/V WILLIAM G. MATHER from hazards associated with towing a museum ship that will not be under her own power during the transfer. The Captain of the Port has determined that this event poses a minor threat to the participants as well as spectator vessels due to the hazards associated with these events.

The combination of inexperienced recreational boaters and large number of commercial vessels that transit this area could easily result in serious injuries or fatalities.

Discussion of Rule

The Coast Guard is proposing a safety zone in Cleveland Harbor, Cleveland, Ohio. This safety zone will encompass all waters in Cleveland Harbor, to include the North Coast Harbor, originating at a line drawn from Pier 32, at position 41°30′36″ N, 081°42′56″ W, extending to position 41°30′43″ N, 081°42′03″ W, thence to Buoy 11 (LLNR 4135) at position 41°30′49″ N, 081°41′53″ W in Cleveland Harbor, thence to the Northeast corner of Municipal Pier at position 41°30′43″ N, 081°41′47″ W. These coordinates are based upon North American Datum 1983 (NAD 83). The Coast Guard will notify the public in advance by way of Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts, and for those who request it from Marine Safety Unit Cleveland, by facsimile.

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 this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the size and location of the safety zone within the water. Commercial vessels will not be hindered by the safety zone, as all commercial traffic will be diverted through the Lake Approach Channel. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for a few hours on the day of the event. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth District Coast Guard Local Notice to Mariners, Marine Information Broadcasts and when requested by facsimile.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Nicole Starr, U.S. Coast Guard Marine Safety Unit Cleveland, 1055 East 9th Street, Cleveland, OH 44114.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you

wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal government, even if that impact may not constitute a ''tribal implication'' under that Order.

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 procedure; and related management system practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T09–126 is added read as follows:

§ 165.T09–126 Safety Zone; 2005 transfer of Museum ship M/V WILLIAM G. MATHER, Cleveland Harbor, Cleveland, Ohio

(a) *Location.* All waters in Cleveland Harbor, to include the North Coast Harbor, originating at a line drawn from Pier 32, at position 41°30′36″ N, 081°42′56″ W, extending to position 41°30′43″ N, 081°42′03″ W, thence to Buoy 11 (LLNR 4135) at position 41°30′49″ N, 081°41′53″ W in Cleveland Harbor, thence to the Northeast corner of Municipal Pier at position 41°30′43″ N, 081°41′47″ W. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective Period.* This section is effective from 10 a.m. (local) through 11 a.m. (local) on September 24, 2005.

(c) *Regulations.* Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 05–18929 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 05–008]

RIN 1625–AA87

Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary fixed security zones in the waters extending approximately 100 yards around six separate oil refinery piers in the San Francisco Bay area. These security zones are an integral part of the Coast Guard's efforts to protect these facilities and the surrounding areas from destruction or damage due to accidents, subversive acts, or other causes of a similar nature. Entry into the zones is prohibited, unless specifically authorized by the Captain of the Port (COTP) San Francisco Bay, or his designated representative. These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, Federal, state and local law enforcement assets.

DATES: This rule is effective from 11:59 p.m. PDT on September 9, 2005, to 11:59 p.m. PST on March 31, 2006.

ADDRESSES: Documents indicated in this preamble, as being available in the docket, are part of docket COTP 05–008 and are available for inspection or copying at the Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ian Callander, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco, (510) 437–3401 or the Sector San Francisco Command Center, at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat to U.S. assets and the public currently exists and is ongoing and any delay in the effective date of this temporary final rule (TFR) is impractical and contrary to the public interest.

For the same reasons, 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**.

Elsewhere in this issue of the **Federal Register** we have published a notice of proposed rulemaking (NPRM) under docket COTP San Francisco Bay 05–007, in which we will propose to make permanent these six temporary security zones. This TFR will provide security around the marine oil refinery facilities during the notice-and-comment rulemaking that proposes to make the security zones in these same locations permanent.

Background and Purpose

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

To address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against marine oil terminals within San Francisco Bay would have on the public interest, the Coast Guard is establishing temporary fixed security zones in the waters extending approximately 100 yards around six separate oil refinery piers in the San Francisco Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these facilities. Due to heightened security concerns, and due to the catastrophic impact a terrorist attack on a marine oil terminal would have on the surrounding waterways, area, and community, security zones are prudent for these facilities.

Discussion of Rule

In this temporary final rule, the Coast Guard is establishing temporary fixed security zones in the waters extending from the surface to the sea floor and approximately 100 yards around six separate oil refinery piers in the San Francisco Bay Area. The specific coordinates defining these zones are given in paragraph (a) of temporary section 33 CFR 165.T11–039.

For the Chevron-Texaco oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Francisco Bay around the Chevron Long Wharf, located in Richmond, California.

For the Conoco-Phillips oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Pablo Bay around the Conoco-Philips Wharf, located in Rodeo, California.

For the Shell Martinez oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Shell Terminal, located in Martinez, California.

For the Tesoro-Amorco oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Amorco Pier, located in Martinez, California.

For the Valero oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Valero Pier, located in Benicia, California.

For the Tesoro-Avon oil facility, the proposed security zone would extend approximately 100 yards into the waters of Suisun Bay around the Avon Pier, located in Martinez, California.

These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, Federal, State and local law enforcement assets. Vessels and people may be allowed to enter these security zones on a case-by-case basis with authorization from the COTP or his designated representative.

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

bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

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

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 impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this rule is not significant because: (i) The zones encompass only small portions of the waterways; (ii) vessels are able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zones is the minimum necessary to provide adequate protection for all of the six marine oil facilities. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have space outside of the zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

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

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–039, to read as follows:

§ 165.T11–039 Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, California.

(a) *Locations.* The following areas are security zones:

(1) *Chevron Richmond Long Wharf, San Francisco Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Chevron Richmond Long Wharf and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
37°55′52.2″ N	122°24′04.7″ W
37°55′41.8″ N	122°24′07.1″ W
37°55′26.8″ N	122°24′35.9″ W
37°55′47.1″ N	122°24′55.5″ W
37°55′42.9″ N	122°25′03.5″ W
37°55′11.2″ N	122°24′32.8″ W
37°55′14.4″ N	122°24′27.5″ W
37°55′19.7″ N	122°24′23.7″ W
37°55′22.2″ N	122°24′26.2″ W
37°55′38.5″ N	122°23′56.9″ W
37°55′47.8″ N	122°23′53.3″ W

and along the shoreline back to the beginning point.

(2) *Conoco-Phillips, San Pablo Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Conoco-Phillips Rodeo Terminal and encompasses all waters in San Pablo Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
38°03′06.0″ N	122°15′32.4″ W
38°03′20.7″ N	122°15′35.8″ W
38°03′21.8″ N	122°15′29.8″ W
38°03′29.1″ N	122°15′31.8″ W
38°03′23.8″ N	122°15′55.8″ W
38°03′16.8″ N	122°15′53.2″ W
38°03′18.6″ N	122°15′45.2″ W
38°03′04.0″ N	122°15′42.0″ W

and along the shoreline back to the beginning point.

(3) *Shell Martinez, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Shell Martinez Terminal and encompasses all waters in San Pablo Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
38°01′39.8″ N	122°07′40.3″ W
38°01′54.0″ N	122°07′43.0″ W
38°01′56.9″ N	122°07′37.9″ W
38°02′02.7″ N	122°07′42.6″ W
38°01′49.5″ N	122°08′08.7″ W
38°01′43.7″ N	122°08′04.2″ W
38°01′50.1″ N	122°07′50.5″ W
38°01′36.3″ N	122°07′47.6″ W

and along the shoreline back to the beginning point.

(4) *Tesoro-Amorco, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Tesoro-Amorco oil terminal wharf and encompasses all waters in the Carquinez Strait within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′03.1″ N	122°07′11.9″ W
38°02′05.6″ N	122°07′18.9″ W
38°02′07.9″ N	122°07′14.9″ W
38°02′13.0″ N	122°07′19.4″ W
38°02′05.7″ N	122°07′35.9″ W
38°02′00.5″ N	122°07′31.1″ W
38°02′01.8″ N	122°07′27.3″ W
38°01′55.0″ N	122°07′11.0″ W

and along the shoreline back to the beginning point.

(5) *Valero, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Valero Benicia Pier and encompasses all waters in the Carquinez Strait within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′37.6″ N	122°07′51.5″ W
38°02′34.7″ N	122°07′48.9″ W
38°02′44.1″ N	122°07′34.9″ W
38°02′48.0″ N	122°07′37.9″ W
38°02′47.7″ N	122°07′42.1″ W

and along the shoreline back to the beginning point.

(6) *Tesoro-Avon, Suisun Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Tesoro-Avon Wharf and encompasses all waters in Suisun Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′24.6″ N	122°04′52.9″ W
38°02′54.0′ N	122°05′19.5″ W
38°02′55.8″ N	122°05′16.1″ W
38°03′02.1″ N	122°05′19.4″ W
38°02′55.1″ N	122°05′42.6″ W
38°02′48.8″ N	122°05′39.2″ W
38°02′52.4″ N	122°05′27.7″ W
38°02′46.5″ N	122°05′22.4″ W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into the security zones described in paragraph (a) of this section is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

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

the Port or his designated representative.

(c) *Enforcement.* All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(d) *Effective period.* This section becomes effective at 11:59 p.m. PDT on September 9, 2005, and will terminate at 11:59 p.m. PST on March 31, 2006.

Dated: September 9, 2005.

W.J. Uberti,

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

[FR Doc. 05–18936 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–085]

RIN 1625–AA00

Safety Zone; Blasting Operations, Demolition of Bridge Piers: Sikorsky Bridge Over the Housatonic River Between Stratford and Milford, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone within 300-yards of the Sikorsky Bridge, which runs between Milford and Stratford, CT. This temporary safety zone is necessary to protect the maritime community transiting the area from the potential safety hazards associated with the demolition and blasting operations of the piers of the old Sikorsky Bridge. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 6 a.m. September 26, 2005 through 6 p.m. October 6, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–05–085 and are available for inspection or copying at Coast Guard Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4429.

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. The Coast Guard was notified by the bridge owner, Connecticut Department of Transportation, of the dates of blasting and demolition operations on August 24, 2005, leaving insufficient time to draft and publish an NPRM and to publish a final rule more than 30 days prior to the effective date. Under 5 U.S.C. (d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. Any delay in the effective date of this rule would be contrary to the public interest as immediate action is necessary to close a portion of the Housatonic River within the vicinity of the Sikorsky Bridge to protect the maritime public from the hazards associated with blasting and debris removal operations for four piers from the old Sikorsky Bridge.

Background and Purpose

The Connecticut Route 15 Bridge over the Housatonic River, also known as the Sikorsky Bridge, is currently being rebuilt. Part of this process has included the demolition of the old Sikorsky Bridge. Piers from the old Bridge remain as hazards to navigation in the waterway and must be removed prior to further construction of the southern span of the new bridge. When detonated, spread of the debris will be minimized by a containment structure around each bridge pier. The blasting and demolition activities have been approved by the Connecticut Department of Environmental Protection to conduct blasting operations. This blasting will also require a Coast Guard explosives handling permit in accordance with 46 Code of Federal Regulations Part 176 as the explosives being used are being loaded onto vessels prior to being placed on the respective piers. The explosives loads onto vessels will be monitored by Coast Guard personnel.

Discussion of Rule

This rule establishes a temporary safety zone on all waters within 300-yards of the Piers of the old Sikorsky Bridge, Route 15 Bridge over the Housatonic River running between Milford and Stratford, CT. This action is intended to prohibit entry of persons and vessel traffic in a portion of the Housatonic River for the protection of life and property of the maritime public from the potential hazards associated with blasting operations and demolition of four piers of the old Sikorsky Bridge. The safety zone will be in effect for approximately 8 days; however, the zone will only be enforced for approximately four-30 minute periods during the blasting of each of the four bridge piers being demolished. Public notifications will be made of this safety zone via marine information broadcasts beginning 1 hour prior to the detonation of the explosives for each of the four piers. The detonations will take place during daylight hours, and will be conducted during high tide.

Any violation of the safety zone described herein, is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

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 rule may have some impact on the public, but these potential impacts will be minimized for the following reasons: This zone covers only a portion of the waters of the Housatonic River, and does not impact commercial vessels. Although this safety zone is in effect for 8 days, the safety zone will only be enforced during blasting operations, encompassing approximately 4 thirty minute periods over the 8 days.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of the Housatonic River that are covered by the safety zone.

For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4429.

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

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in 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 would not concern 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

The Coast Guard 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) from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. An Environmental Analysis Checklist and Categorical Exclusion Determination are available for review at the location listed 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. 1225 and 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. From 6 a.m. on September 26, 2005, until 6 p.m. on October 6, 2005, add temporary § 165.T01–085 to read as follows:

§ 165.T01–085 Safety Zone: Blasting operations, demolition of bridge piers: Sikorsky Bridge over the Housatonic River between Stratford and Milford, CT.

(a) *Location.* All waters of the Housatonic River within 300 yards of the Sikorsky Bridge, over Route 15 between Stratford and Milford, CT.

(b) *Enforcement period.* The safety zone will be enforced from 6 a.m. on September 26, 2005 until 6 p.m. on September 29, 2005, and from 6 a.m. on October 3, 2005, until 6 p.m. on October 6, 2005.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and Federal law enforcement vessels. Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

Dated: September 9, 2005.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 05–18937 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IL–0002; FRL–7972–7]

Designation of Areas for Air Quality Planning Purposes; Illinois; Lyons Township PM–10 Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Illinois' request to redesignate to attainment the Lyons Township (McCook) area currently designated as nonattainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). We are also approving the Lyons Township maintenance plan, submitted by the Illinois Environmental Protection Agency (IEPA) on August 2, 2005, as a revision to the PM–10 State Implementation Plan (SIP) for this area.

DATES: This ''direct final'' rule is effective on November 21, 2005, unless EPA receives adverse written comments by October 24, 2005. If EPA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IL–0002, by one of the following methods:

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

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

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

Fax: (312) 886–5824.

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

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IL–0002. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register**.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office. This Facility is open from 8:30

AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplemental information section is arranged as follows:

I. What Action Is EPA Taking?
II. What Is the Background for This Action?
III. Why Was This SIP Revision Submitted?
IV. What Requirements Must Be Met for Approval of a Redesignation, and How Did the State Meet Them?
A. Attainment of the PM–10 NAAQS
B. State Implementation Plan Approval
C. Improvement in Air Quality due to Permanent and Enforceable Measures
D. Applicable Requirements of Section 110 and Part D of the Act
1. Section 110 Requirements.
2. Part D Requirements.
E. Fully Approved Maintenance Plan Under Section 175A of the Act
1. Attainment Inventory.
2. Maintenance Demonstration and Verification of Continued Attainment.
3. Monitoring Network.
4. Contingency Plan.
V. Rulemaking Action
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

We are approving the State of Illinois' request to redesignate the Lyons Township PM–10 nonattainment area to attainment of the PM–10 NAAQS that was submitted on August 2, 2005. We are also approving the maintenance plan for this area into the Illinois SIP.

II. What Is the Background for This Action?

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with the PM–10 indicator. (See 40 CFR 50.6). The 24-hour primary PM–10 standard is 150 micrograms per cubic meter (μg/m^3), with no more than one expected exceedance per year. The annual primary PM–10 standard is 50 μg/m^3, expected annual arithmetic mean averaged over three years. The secondary PM–10 standards are identical to the primary standards.

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990, certain areas were designated nonattainment for PM–10 and were classified as ''moderate''. These initial areas included the Lyons Township, Illinois, PM–10 nonattainment area.

On July 18, 1997 (62 FR 38652), EPA added a fine particle NAAQS, for particulate matter less than 2.5 microns in aerodynamic diameter ($PM_{2.5}$). EPA classified the Chicago metropolitan area, which includes the Lyons Township area, as a $PM_{2.5}$ nonattainment area on January 5, 2005.

III. Why Was This SIP Revision Submitted?

IEPA believes that the Lyons Township PM–10 nonattainment area is eligible for redesignation because we have approved the PM–10 SIP for this area and monitoring data demonstrate that this area has been attaining the PM–10 NAAQS since 1995. Under a cover letter dated August 2, 2005 the State submitted a redesignation request for the Lyons Township PM–10 nonattainment area. A public hearing was held on June 21, 2005. The State did not receive any adverse comments during the public hearing or the 30-day comment period. The redesignation request contains text describing how the statutory requirements were met and consists primarily of a maintenance plan and air quality monitoring data for the area.

IV. What Requirements Must Be Met for Approval of a Redesignation, and How Did the State Meet Them?

Section 107(d)(3)(D) of the Act allows the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, the general preamble to Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), and a September 4, 1992 policy and guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement must be permanent and enforceable;
4. The area has met all relevant requirements under section 110 and Part D of the Act;
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

A. Attainment of the PM–10 NAAQS

A state must demonstrate that an area has attained the PM–10 NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR section 50.6. The data must represent the most recent three consecutive years of complete ambient air quality monitoring data collected in accordance with EPA methodologies.

The Cook County Department of Environmental Control currently operates two PM–10 monitoring sites in the Lyons Township nonattainment area under agreement with IEPA. The State submitted ambient air quality data and supporting documentation from each monitoring site for the 2001–2003 period demonstrating that the area has attained the PM–10 NAAQS. This air quality data was quality assured and placed in AIRS. There were no exceedances of the 24-hour or annual PM–10 NAAQS recorded at these monitors during this time period. Therefore, the State has adequately demonstrated, through ambient air quality data, that the PM–10 NAAQS has been attained in Lyons Township, with 2003 as the attainment year.

B. State Implementation Plan Approval

Those States containing initial moderate PM–10 nonattainment areas were required to submit by November 15, 1991 a SIP which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM–10 NAAQS by December 31, 1994. In order to be redesignated, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Illinois submitted the required SIP revisions for the Lyons Township PM–10 nonattainment area on May 15, 1992. Upon review of Illinois' submittal, we identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, we proposed to conditionally approve the SIP (59 FR 26988). Final conditional approval was published on November 18, 1994 (59 FR 59653). Illinois made several submittals to correct the remaining deficiencies and meet all of the commitments of the conditional approval. EPA fully approved the Lyons Township PM–10 nonattainment area SIP on September 8, 1998 (63 FR 47431). With this approval, Illinois had fulfilled all Clean Air Act requirements for Part D plans for the Lyons Township moderate PM–10 nonattainment area.

C. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual, enforceable emission reductions.

The State provided a discussion of the PM–10 emission reductions in Lyons Township for the years 1993–2003. PM–10 emissions dropped significantly in the area in 1994 as a result of the control measures included in the PM–10 SIP approved by EPA in 1998. The State has adequately demonstrated in its submittal that the improvement in air quality is due to permanent and enforceable emission reductions of over 1500 tons per year of PM–10 in Lyons Township as a result of implementing the federally enforceable control measures in the SIP.

D. Applicable Requirements of Section 110 and Part D of the Act

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 and of part D of the Act. The EPA interprets this to mean that for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request.

1. *Section 110 Requirements.* Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Illinois SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. Title 40 CFR Part 52, subpart O, further evidences that the Illinois SIP was approved under section 110 of the Act and, we have found that the SIP satisfies all Part D requirements.

2. *Part D Requirements.* Before a PM–10 nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of Part D. Subpart 1 of Part D establishes the general requirements applicable to all nonattainment areas and subpart 4 of Part D establishes specific requirements applicable to PM–10 nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM–10 NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory have been satisfied through the 1998 approval of the Lyons Township PM–10 SIP (63 FR 47431). The requirements of the Part D—New Source Review (NSR) permit program will be replaced by the Part C—Prevention of Significant Deterioration (PSD) program for major new sources of PM–10 once the area has been redesignated. Because the PSD program was delegated to the State of Illinois on February 28, 1980, and amended on November 17, 1981, it will become fully effective immediately upon redesignation. However, because this area is included within the Chicago $PM_{2.5}$ nonattainment area, the requirements of the Part D NSR permit program will also continue to apply to new or modified sources of particulate matter, with the exception that $PM_{2.5}$ will now be the indicator for particulate matter rather than PM–10.

E. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 175A of the Act requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. The basic components needed to ensure proper maintenance of the NAAQS are: attainment inventory, maintenance demonstration, verification of continued attainment, commitment to maintain the ambient air monitoring network, and a contingency plan. EPA is approving the Lyons Township maintenance plans as discussed below.

1. *Attainment Inventory.* Appendix B of the state's August 2, 2005 submittal contains an inventory of the reported 2003 PM–10 emissions for industrial facilities located in the Lyons Township nonattainment area.

2. *Maintenance Demonstration and Verification of Continued Attainment.* The State of Illinois has adequately demonstrated attainment and maintenance of the PM–10 NAAQS through its commitment to maintain the existing control requirements for point sources and fugitive dust sources contained in the PM–10 SIP for this area. Illinois is required to submit to EPA any changes to its rules or emission limits applicable to PM–10 sources in Lyons Township for approval as a revision to the SIP, and will include, where appropriate, a demonstration that the changes will not interfere with maintenance of the PM–10 NAAQS. Further, projected emission trends for the years 2002–2014 from EPA's Nonroad emission model and EPA's Mobile 6.2 emission model both indicate that projected PM–10 emissions for both on-road and off-road mobile sources will decrease significantly over the next ten year period. For off-road sources in Cook County, the modeling predicts a decrease of over 650 tons/year of PM–10 in 2014 from 2002 levels. For on-road sources in Cook County, the modeling predicts a decrease of over 60 tons/year of PM–10 in 2014 from 2002 levels. The maintenance plan for this area also contains a commitment from the State to revise and submit a new maintenance plan within eight years of approval of this redesignation. In addition, Illinois will be required to develop and implement a plan to address $PM_{2.5}$ that will further improve air quality for particulate matter in this area. Future emission reductions needed to attain the $PM_{2.5}$ NAAQS will also help to ensure continued attainment of the PM–10 NAAQS in the Lyons Township areas.

3. *Monitoring Network.* Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM–10 monitoring stations to demonstrate ongoing compliance with the PM–10 NAAQS. IEPA will consult with EPA Region 5 staff prior to making any changes to the existing monitoring network should changes be necessary in the future.

4. *Contingency Plan.* Section 175A of the Act also requires that a maintenance plan include contingency measures, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). However, if an area has been able to attain the NAAQS without implementation of the Part D nonattainment SIP contingency measures, and the contingency plan includes a requirement that the State will implement all of the PM–10 control measures which were contained in the SIP before redesignation to attainment, then the State can carry over into the area's maintenance plan the Part D SIP measures not previously implemented.

IEPA will rely on ambient air monitoring data in the Lyons Township area to track compliance with the PM–10 NAAQS and to determine the need to implement contingency measures. In the event that an exceedance of the PM–10 NAAQS occurs, the State will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. If there is a violation of the PM–10 NAAQS, and it is not due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, IEPA will determine additional control measures needed to assure future attainment of the PM–10 NAAQS. Control measures that can be implemented in a short time will be selected in order to be in place within eighteen (18) months from the time that IEPA determined that a violation occurred. Although the point sources listed in the inventory will be the primary focus, the possibility that the problem is attributable to new or previously unknown PM–10 sources will be considered. Illinois will submit to EPA an analysis to demonstrate that the proposed measures are adequate to return the area to attainment. Adoption of any additional control measures is subject to the necessary administrative and legal process. This process will include publication of notices, an opportunity for public hearing, and other measures required by Illinois law.

V. Rulemaking Action

EPA is approving the State of Illinois' request to redesignate the Lyons Township (McCook) PM–10 nonattainment area to attainment. EPA is also approving Illinois' maintenance plan for the Lyons Township nonattainment area as a SIP revision because it meets the requirements of section 175A of the Act. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 21, 2005 without further notice unless we receive relevant adverse written comments by October 24, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 21, 2005.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (*59 FR 22951*, November 9, 2000).

Executive Order 13132 Federalism

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

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United

States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 13, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

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

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

■ 2. Section 52.725 is amended by adding a new paragraph (h) to read as follows:

§ 52.725 Control Strategy: Particulates.

* * * * *

(h) Approval—On August 2, 2005, the State of Illinois submitted a request to redesignate the Lyons Township (McCook), Cook County particulate matter nonattainment area to attainment of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). In its submittal, the State also requested that EPA approve the maintenance plan for the area into the Illinois PM SIP. The redesignation request and maintenance plan meet the redesignation requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.314, the table entitled ''Illinois PM–10'' is amended by revising the entry a. Lyons Township to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Cook County:				
a. Lyons Township	11/21/2005	Attainment.		

* * * * * * *

* * * * *

[FR Doc. 05–18958 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IL–0003; FRL–7973–2]

Designation of Areas for Air Quality Planning Purposes; Illinois; Lake Calumet PM–10 Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Illinois' request to redesignate to attainment the Lake Calumet (Southeast Chicago) area currently designated as nonattainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). We are also approving the Lake Calumet maintenance plan, submitted by the Illinois Environmental Protection Agency (IEPA) on August 2, 2005, and as supplemented on September 8, 2005, as a revision to the PM–10 State Implementation Plan (SIP) for this area.

DATES: This ''direct final'' rule is effective on November 21, 2005, unless EPA receives adverse written comments by October 24, 2005. If EPA receives adverse comment, it will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IL–0003, by one of the following methods:

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

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

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

Fax: (312)886–5824.

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

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IL–0003. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your 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 instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register.**

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplemental information section is arranged as follows:

I. What Action Is EPA Taking?
II. What Is the Background for this Action?
III. Why Was this SIP Revision Submitted?
IV. What Requirements Must Be Met for Approval of a Redesignation, and How Did the State Meet Them?
A. Attainment of the PM–10 NAAQS
B. State Implementation Plan Approval
C. Improvement in Air Quality Due to Permanent and Enforceable Measures
D. Applicable Requirements of Section 110 and Part D of the Act
1. Section 110 Requirements.
2. Part D Requirements.
E. Fully Approved Maintenance Plan Under Section 175A of the Act
1. Attainment Inventory.
2. Maintenance Demonstration and Verification of Continued Attainment.
3. Monitoring Network.
4. Contingency Plan.
V. Rulemaking Action.
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

We are approving the State of Illinois' request to redesignate the Lake Calumet PM–10 nonattainment area to attainment of the PM–10 NAAQS that was submitted on August 2, 2005, and as supplemented on September 8, 2005. We are also approving the maintenance plan for this area into the Illinois SIP.

II. What Is the Background for this Action?

On July 1, 1987 (52 FR 24634), EPA revised the NAAQS for particulate matter with the PM–10 indicator. (See 40 CFR 50.6). The 24-hour primary PM–10 standard is 150 micrograms per cubic meter (μg/m3), with no more than one expected exceedance per year. The annual primary PM–10 standard is 50 μg/m3, expected annual arithmetic mean averaged over three years. The secondary PM–10 standards are identical to the primary standards.

Under section 107(d)(4)(B) of the Clean Air Act (Act), as amended on November 15, 1990, certain areas were designated nonattainment for PM–10 and were classified as ''moderate''. These initial areas included the Lake Calumet, Illinois, PM–10 nonattainment area.

On July 18, 1997 (62 FR 38652), EPA added a fine particle NAAQS, for particulate matter less than 2.5 microns in aerodynamic diameter (PM2.5). EPA classified the Chicago metropolitan area, which includes the Lake Calumet area, as a PM2.5 nonattainment area on January 5, 2005.

III. Why Was This SIP Revision Submitted?

IEPA believes that the Lake Calumet PM–10 nonattainment area is eligible for redesignation because we have approved the PM–10 SIP for this area and monitoring data demonstrate that this area has been attaining the PM–10 NAAQS since 1993. Under a cover letter dated August 2, 2005, and as supplemented on September 8, 2005, the State submitted a redesignation request for the Lake Calumet PM–10 nonattainment area. A public hearing was held on July 27, 2005. The State did not receive any adverse comments during the public hearing or the 30-day comment period. The redesignation request contains text describing how the statutory requirements were met and consists primarily of a maintenance plan and air quality monitoring data for the area.

IV. What Requirements Must Be Met for Approval of a Redesignation, and How Did the State Meet Them?

Section 107(d)(3)(D) of the Act allows the Governor of a State to request the redesignation of an area from nonattainment to attainment. The criteria used to review redesignation requests are derived from the Act, the general preamble to Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), and a September 4, 1992 policy and guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment.'' An area can be redesignated to attainment if the following conditions are met:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k) of the Act;
3. The air quality improvement must be permanent and enforceable;
4. The area has met all relevant requirements under section 110 and Part D of the Act;
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

A. Attainment of the PM–10 NAAQS

A state must demonstrate that an area has attained the PM–10 NAAQS through submittal of ambient air quality data from an ambient air monitoring network representing peak PM–10 concentrations. The data, which must be quality assured and recorded in the Aerometric Information Retrieval System (AIRS), must show that the average annual number of expected

exceedances for the area is less than or equal to 1.0, pursuant to 40 CFR section 50.6. The data must represent the most recent three consecutive years of complete ambient air quality monitoring data collected in accordance with EPA methodologies.

The Cook County Department of Environmental Control currently operates two PM–10 monitoring sites in the Lake Calumet nonattainment area under agreement with IEPA. The State submitted ambient air quality data and supporting documentation from each monitoring site for the 2001–2003 period demonstrating that the area has attained the PM–10 NAAQS. This air quality data was quality assured and placed in AIRS. There were no exceedances of the 24-hour or annual PM–10 NAAQS recorded at these monitors during this time period. Therefore, the State has adequately demonstrated, through ambient air quality data, that the PM–10 NAAQS has been attained in Lake Calumet, with 2003 as the attainment year.

B. State Implementation Plan Approval

Those States containing initial moderate PM–10 nonattainment areas were required to submit by November 15, 1991 a SIP which implemented reasonably available control measures (RACM) by December 10, 1993 and demonstrated attainment of the PM–10 NAAQS by December 31, 1994. In order to be redesignated, the SIP for the area must be fully approved under section 110(k) of the Act, and must satisfy all requirements that apply to the area. Illinois submitted the required SIP revisions for the Lake Calumet PM–10 nonattainment area on May 15, 1992. Upon review of Illinois' submittal, we identified several concerns. Illinois submitted a letter on March 2, 1994, committing to satisfy all of these concerns within one year of final conditional approval. On May 25, 1994, we proposed to conditionally approve the SIP (59 FR 26988). Final conditional approval was published on November 18, 1994 (59 FR 59653). Illinois made several submittals to correct the remaining deficiencies and meet all of the commitments of the conditional approval. EPA fully approved the Lake Calumet PM–10 nonattainment area SIP on July 14, 1999 (64 FR 37847). With this approval, Illinois had fulfilled all Clean Air Act requirements for Part D plans for the Lake Calumet moderate PM–10 nonattainment area.

C. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the State must demonstrate that air quality improvements are the result of actual, enforceable emission reductions.

The State provided a discussion of the PM–10 emission reductions in Lake Calumet for the years 1993–2003. PM–10 emissions dropped significantly in the area in 1994 as a result of the control measures included in the PM–10 SIP approved by EPA in 1999. The State has adequately demonstrated in its submittal that the improvement in air quality is due to permanent and enforceable emission reductions of over 1500 tons per year of PM–10 in Lake Calumet as a result of implementing the federally enforceable control measures in the SIP.

D. Applicable Requirements of Section 110 and Part D of the Act

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 and of part D of the Act. The EPA interprets this to mean that for a redesignation request to be approved, the State must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request.

1. *Section 110 Requirements.* Section 110(a)(2) contains general requirements for nonattainment plans. For purposes of redesignation, the Illinois SIP was reviewed to ensure that all applicable requirements under the amended Act were satisfied. Title 40 CFR Part 52, subpart O, further evidences that the Illinois SIP was approved under section 110 of the Act and, we have found that the SIP satisfies all Part D requirements.

2. *Part D Requirements.* Before a PM–10 nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of Part D. Subpart 1 of Part D establishes the general requirements applicable to all nonattainment areas and subpart 4 of Part D establishes specific requirements applicable to PM–10 nonattainment areas.

The requirements of sections 172(c) and 189(a) regarding attainment of the PM–10 NAAQS, and the requirements of section 172(c) regarding reasonable further progress, imposition of RACM, the adoption of contingency measures, and the submission of an emission inventory have been satisfied through the 1999 approval of the Lake Calumet PM–10 SIP (64 FR 37847). The requirements of the Part D—New Source Review (NSR) permit program will be replaced by the Part C—Prevention of Significant Deterioration (PSD) program for major new sources of PM–10 once the area has been redesignated. Because the PSD program was delegated to the State of Illinois on February 28, 1980, and amended on November 17, 1981, it will become fully effective immediately upon redesignation. However, because this area is included within the Chicago $PM_{2.5}$ nonattainment area, the requirements of the Part D NSR permit program will also continue to apply to new or modified sources of particulate matter, with the exception that $PM_{2.5}$ will now be the indicator for particulate matter rather than PM–10.

E. Fully Approved Maintenance Plan Under Section 175A of the Act

Section 175A of the Act requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. The basic components needed to ensure proper maintenance of the NAAQS are: Attainment inventory, maintenance demonstration, verification of continued attainment, commitment to maintain the ambient air monitoring network, and a contingency plan. EPA is approving the Lake Calumet maintenance plans as discussed below.

1. *Attainment Inventory.* Appendix B of the state's submittal contains an inventory of the reported 2003 PM–10 emissions for industrial facilities located in the Lake Calumet nonattainment area.

2. *Maintenance Demonstration and Verification of Continued Attainment.* The State of Illinois has adequately demonstrated attainment and maintenance of the PM–10 NAAQS through its commitment to maintain the existing control requirements for point sources and fugitive dust sources contained in the PM–10 SIP for this area. Illinois is required to submit to EPA any changes to its rules or emission limits applicable to PM–10 sources in Lake Calumet for approval as a revision to the SIP, and will include, where appropriate, a demonstration that the changes will not interfere with maintenance of the PM–10 NAAQS. Further, projected emission trends for the years 2002–2014 from EPA's Nonroad emission model and EPA's Mobile 6.2 emission model both indicate that projected PM–10 emissions for both on-road and off-road mobile

sources will decrease significantly over the next ten year period. For off-road sources in Cook County, the modeling predicts a decrease of over 650 tons/year of PM–10 in 2014 from 2002 levels. For on-road sources in Cook County, the modeling predicts a decrease of over 60 tons/year of PM–10 in 2014 from 2002 levels. The maintenance plan for this area also contains a commitment from the State to revise and submit a new maintenance plan within eight years of approval of this redesignation. In addition, Illinois will be required to develop and implement a plan to address $PM_{2.5}$ that will further improve air quality for particulate matter in this area. Future emission reductions needed to attain the $PM_{2.5}$ NAAQS will also help to ensure continued attainment of the PM–10 NAAQS in the Lake Calumet area.

3. *Monitoring Network.* Once an area has been redesignated, the State must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The maintenance plan should contain provisions for continued operation of air quality monitors that will provide such verification. In its submittal, the State commits to continue to operate and maintain the network of PM–10 monitoring stations to demonstrate ongoing compliance with the PM–10 NAAQS. IEPA will consult with EPA Region 5 staff prior to making any changes to the existing monitoring network should changes be necessary in the future.

4. *Contingency Plan.* Section 175A of the Act also requires that a maintenance plan include contingency measures, as necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. These contingency measures are distinguished from those generally required for nonattainment areas under section 172(c)(9). However, if an area has been able to attain the NAAQS without implementation of the Part D nonattainment SIP contingency measures, and the contingency plan includes a requirement that the State will implement all of the PM–10 control measures which were contained in the SIP before redesignation to attainment, then the State can carry over into the area's maintenance plan the Part D SIP measures not previously implemented.

IEPA will rely on ambient air monitoring data in the Lake Calumet area to track compliance with the PM–10 NAAQS and to determine the need to implement contingency measures. In the event that an exceedance of the PM–10 NAAQS occurs, the State will expeditiously investigate and determine the source(s) that caused the exceedance and/or violation, and enforce any SIP or permit limit that is violated. If there is a violation of the PM–10 NAAQS, and it is not due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, IEPA will determine additional control measures needed to assure future attainment of the PM–10 NAAQS. Control measures that can be implemented in a short time will be selected in order to be in place within eighteen (18) months from the time that IEPA determined that a violation occurred. Although the point sources listed in the inventory will be the primary focus, the possibility that the problem is attributable to new or previously unknown PM–10 sources will be considered. Illinois will submit to EPA an analysis to demonstrate that the proposed measures are adequate to return the area to attainment. Adoption of any additional control measures is subject to the necessary administrative and legal process. This process will include publication of notices, an opportunity for public hearing, and other measures required by Illinois law.

V. Rulemaking Action

EPA is approving the State of Illinois' request to redesignate the Lake Calumet (Southeast Chicago) PM–10 nonattainment area to attainment. EPA is also approving Illinois' maintenance plan for the Lake Calumet nonattainment area as a SIP revision because it meets the requirements of section 175A of the Act. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 21, 2005 without further notice unless we receive relevant adverse written comments by October 24, 2005. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 21, 2005.

VI. Statutory and Executive Order Reviews

Executive Order 12866; Regulatory Planning and Review

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

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

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

Regulatory Flexibility Act

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

Unfunded Mandates Reform Act

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

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (*59 FR 22951,* November 9, 2000).

Executive Order 13132 Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various

levels of government, as specified in Executive Order 13132 (*64 FR 43255,* August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

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

National Technology Transfer Advancement Act

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

Paperwork Reduction Act

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

Congressional Review Act

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 13, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ 40 CFR parts 52 and 81 are amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

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

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

■ 2. Section 52.725 is amended by adding a new paragraph (i) to read as follows:

§ 52.725 Control Strategy: Particulates.

* * * * *

(i) Approval—On August 2, 2005, and as supplemented on September 8, 2005, the State of Illinois submitted a request to redesignate the Lake Calumet (Southeast Chicago), Cook County particulate matter nonattainment area to attainment of the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). In its submittal, the State also requested that EPA approve the maintenance plan for the area into the Illinois PM SIP. The redesignation request and maintenance plan meet the redesignation requirements of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.314, the table entitled ''Illinois PM–10'' is amended by revising entry b. for Cook County to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
Cook County:				
* * *	*	*	*	*
b. The area bounded on the north by 79th Street, on the west by Interstate 57 between Sibley Boulevard and Interstate 94 and by Interstate 94 between Interstate 57 and 79th Street, on the south by Sibley Boulevard, and on the east by the Illinois/Indiana State line.	11/21/05	Attainment.		
* * *	*	*	*	*

[FR Doc. 05–18957 Filed 9–21–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–KY–0001–200521(a); FRL–7972–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Christian County, Kentucky Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 21, 2005, the Commonwealth of Kentucky, through the Kentucky Division For Air Quality (KDAQ), submitted a request for parallel processing and on May 20, 2005, submitted a final request: To redesignate the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and for EPA approval of a Kentucky State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Christian County, Kentucky. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is comprised of two counties (*i.e.*, Christian County, Kentucky and Montgomery County, Tennessee). EPA is approving the 8-hour ozone redesignation request for the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. Additionally, EPA is approving the 8-hour ozone maintenance plan for Christian County, Kentucky. This approval is based on EPA's determination that the Commonwealth of Kentucky has demonstrated that Christian County, Kentucky has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On June 29, 2005, the State of Tennessee submitted a redesignation request and maintenance plan for the Montgomery, Tennessee portion of this area for EPA parallel processing. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the years 2004 and 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Christian County, Kentucky. EPA is approving such MVEBs.

DATES: This rule is effective on November 21, 2005, without further notice, unless EPA receives adverse written comments by October 24, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–KY–0001, 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://docket.epa.gov/rmepub/* RME. EPA's electronic public docket and comment system is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *difrank.stacy@epa.gov*.
4. Fax: 404.562.9019.
5. Mail: ''R04–OAR–2005–KY–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. Hand Delivery or Courier. Deliver your comments to: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–KY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/*. 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 RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9042. Ms. Stacy DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What are the Actions is EPA Taking?

II. What is the Background for the Actions?
III. What are the Criteria for Redesignation?
IV. Why is EPA Taking These Actions?
V. What is the Effect of EPA's Actions?
VI. What is EPA's Analysis of the Request?
VII. What is An Adequacy Determination and What is the Status of EPA's Adequacy Determination for the Christian County portion of the Clarksville-Hopkinsville, TN–KY Maintenance Area's New MVEB for the Years 2004 and 2016?
VIII. Actions on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the 2004 and 2016 MVEBs.
IX. Statutory and Executive Order Reviews

I. What Are the Actions is EPA Taking?

Through this rulemaking, EPA is taking several related actions. EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and the Christian County, Kentucky portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Christian County portion of the Clarksville-Hopkinsville area is a basic 8-hour nonattainment ozone area. Christian County is located in the Clarksville-Hopkinsville, Tennessee-Kentucky Metropolitan Statistical Area, which contains Christian County, Kentucky and Montgomery County, Tennessee. EPA is approving a request to change the legal designation of Christian County, Kentucky from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also approving Kentucky's 8-hour ozone maintenance plan for Christian County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Clarksville-Hopkinsville area (of which Christian County is a part) in attainment for the 8-hour ozone NAAQS for the next 12 years.

Additionally, through this rulemaking, EPA is announcing its action on the Adequacy Process for the newly-established 2004 and 2016 MVEBs for Christian County, Kentucky. The Adequacy comment period for the 2004 and 2016 MVEBs began on March 29, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm)*. The Adequacy comment period for these MVEBs closed on April 28, 2005. No requests or adverse comments on this submittal were received during EPA's Adequacy comment period. Please see section VII of this rulemaking for further explanation of this process.

II. What Is the Background for the Action?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.* 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''Comparisons with the Primary and Secondary Ozone Standards'' states:

> ''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Clarksville-Hopkinsville 8-hour ozone nonattainment area was designated using 2001 to 2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2— that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase I 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.*, the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values. The Clarksville-Hopkinsville area was originally designated as a ''basic'' 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) and is subject to subpart 1 of part D. In 2004, the ambient ozone data for the interstate Clarksville-Hopkinsville nonattainment area indicated no further violations of the 8-hour ozone standard, using data from the 3-year period of 2002–2004 (with the 2002–2004 design value of 0.082 ppm), to demonstrate attainment. Available preliminary monitoring data through August 2005 indicates continued attainment of the 8-hour ozone standard. EPA expects to take action on a request to redesignate the Tennessee portion of the area (*i.e.*, Montgomery County) to attainment for the 8-hour ozone NAAQS in a separate action.

On May 20, 2005, the Commonwealth of Kentucky requested redesignation to attainment for the 8-hour ozone standard for the Christian County, Kentucky portion of the Clarksville-Hopkinsville interstate 8-hour ozone area. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons of 2002 through 2004, indicating the 8-hour ozone NAAQS had been achieved for the Clarksville-Hopkinsville area (of which Christian County, Kentucky is a part). The ozone season for this area is from April 1 until

September 30 of a calendar year. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Redesignation Review Criteria?

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

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

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas, Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why is EPA Taking These Actions?

On May 20, 2005, the Commonwealth of Kentucky requested redesignation of the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA believes that the Commonwealth of Kentucky has demonstrated that Christian County, Kentucky (as part of the Clarksville-Hopkinsville area) has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA.

V. What is the Effect of EPA's Actions?

Approval of this redesignation request would change the official designation of Christian County, Kentucky for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Kentucky SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2016. The maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS, and would establish MVEBs of 3.83 tons per day (tpd) and 2.08 tpd for VOC, and 9.53 tpd and 3.83 tpd for NO_X for the years 2004 and 2016, respectively.

VI. What is EPA's Analysis of the Request?

EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all redesignation criteria have been met. The basis for EPA's determination is as follows:

(1) The Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS

EPA is making the determination that the area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

KDAQ submitted ozone monitoring data for the ozone seasons from 2002 to 2004. This data has been quality assured and is recorded in AQS. The fourth high averages for 2002, 2003 and 2004, and the 3-year average of these values (*i.e.* design value), are summarized in the following table:

County	2002	2003	2004	2002–2004
Christian	0.093	0.080	0.074	0.082

Available preliminary monitoring data through June 2005 indicates continued attainment of the 8-hour ozone standard. In addition, as discussed below with respect to the maintenance plan, KDAQ has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Kentucky provides an adequate demonstration that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS.

(2) Kentucky has a fully approved SIP under section 110(k) for Christian County and (5) Kentucky has met all applicable requirements under section 110 and part D of the CAA.

Below is a summary of how these two criteria were met.

EPA has determined that Kentucky has met all applicable SIP requirements for Christian County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Kentucky SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. Christian County, Kentucky has met all applicable requirements under section 110 and part D of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements: Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' memorandum from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also guidance documents listed above in Section III.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (i.e. for redesignations) and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). In addition, Kentucky's response to the CAIR rule is not due until September 2006.

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, EPA also notes that it has previously approved provisions in the Kentucky SIP addressing section 110 elements under the 1-hour standard (47 FR 30059, July 12, 1982). EPA believes that the section 110 SIP approved for the 1-hour standard is sufficient to meet

requirements under the 8-hour standard as well.

Part D requirements: EPA has also determined that the Kentucky SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Clarksville-Hopkinsville area.

Part D, subpart 1 applicable SIP requirements: For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). None of the requirements under part D became due prior to submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), Reasonable Further Progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that part D requirements did not become due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and new source review requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements: Section 176(c) of the CAA requires states to establish criteria and procedures to ensure the Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate. EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal confomity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (Dec. 7, 1995, Tampa, FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Kentucky has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, Kentucky need not have a fully approved part D NSR program prior to approval of the redesignation request. Kentucky's PSD program will become effective in the area upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. The area has a fully approved applicable SIP under section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for the Christian County area under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memo at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001); plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Christian County area (45 FR 6092 and 47 FR 30059, July 12, 1982). As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

(3) The air quality improvement in the Clarksville-Hopkinsville 8-hour ozone area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions

EPA believes that Kentucky has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2001–2004, have reduced local VOC and NO_X emissions and brought the area into attainment:

—Federal Motor Vehicle Control Standards in Kentucky;
—EPA's Tier 2/Low Sulfur Gasoline program;
—EPA's Heavy-Duty Engine and Vehicle and Fuel Standards;
—Federal controls on certain nonroad engines implemented during the 2002–2004 period;
—Reductions due to the NO_X SIP Call;

In addition to the reductions mentioned above, Kentucky is also relying on the following controls to maintain the 8-hour standard:

—All new major VOC sources locating in Kentucky shall as a minimum apply control procedures that are reasonable, available and practical pursuant to Kentucky regulation 401 KAR 50:012;
—Prevention of Significant Deterioration requirements;
—Federal Motor Vehicle Control Standards in Kentucky;
—Federal controls on certain nonroad engines after 2000;
—Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions will also contribute to maintaining the standard in the area.

Kentucky has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO_X emissions. Most of the reductions are attributable to Federal programs such as EPA's Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, Kentucky has indicated in its submittal that the Clarksville-Hopkinsville area has benefited from emissions reductions that have been achieved and will continue to be achieved through implementation of the NO_X SIP Call, beginning in 2002. Also, the following non-highway mobile source reduction programs were implemented during the 2002–2004 period: small spark-ignition engines, large-spark ignition engines, locomotives and land-based diesel engines. Kentucky has also demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvement in ozone levels. EPA believes that permanent and enforceable emissions reductions in and surrounding the nonattainment area are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard. EPA believes that permanent and enforceable emissions reductions are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard.

(4) The area has a fully approved maintenance plan pursuant to section 175A of the CAA

In conjunction with its request to redesignate the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment status, KDAQ submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Christian County area for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, Kentucky must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum, dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

b. Attainment Emissions Inventory

The Clarksville-Hopkinsville area has selected 2004 as ''the attainment year'' for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2004 VOC and NO_X emissions for the Christian County area were developed consistent with EPA guidance and are summarized in the table in the following subsection.

c. Maintenance Demonstration

The May 20, 2005, submittal includes a 12-year maintenance plan for Christian County. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which the Clarksville-Hopkinsville area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future inventory projected years for 2007, 2010, 2013, and 2016.

(iii) Identifies an ''out year'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, a MVEB was established for the last year of the maintenance plan. See section VII below.

(iv) Provides the following actual and projected emissions inventories for Christian County.

NO_X EMISSIONS (TPD) FOR CHRISTIAN COUNTY

Source category	2004	2007	2010	2013	2016
Point	1.42	1.48	1.55	1.60	1.67
Area	0.14	0.14	0.14	0.14	0.14
Mobile	9.53	8.13	6.59	4.97	3.83
Nonroad	3.80	3.55	3.23	2.83	2.38
Total	14.89	13.30	11.51	9.54	8.02

VOC EMISSIONS (TPD) FOR CHRISTIAN COUNTY

Source category	2004	2007	2010	2013	2016
Point	1.87	2.04	2.22	2.27	2.46
Area	4.40	4.47	4.57	4.50	4.55
Mobile	3.83	3.17	2.68	2.31	2.08
Nonroad	1.33	1.14	1.02	0.96	0.93
Total	11.43	10.82	10.49	10.04	10.02

d. Monitoring Network

There is currently one monitor measuring ozone, located within Christian County, Kentucky, which provides air quality data for the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area. Kentucky has committed in the maintenance plan to continue operation of the ozone monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

Kentucky has the legal authority to enforce and implement the requirements of the ozone maintenance plan for Christian County, Kentucky. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Kentucky will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories Kentucky will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, Kentucky will re-project emissions.

g. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that Kentucky will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the May 20, 2005 submittal, Kentucky affirms that all programs instituted by Kentucky and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. In the submittal, Kentucky commits to adopt, within nine months, one or more contingency measures to re-attain the standard, in the event of a violation of the 8-hour ozone NAAQS in the Clarksville-Hopkinsville nonattainment area. Kentucky notes that all regulatory programs will be implemented within 18 months. Specifically, the maintenance plan includes the following contingency measures to correct any future violations of the 8-hour ozone standard:

- Implementation of a program to require additional emissions reductions on stationary sources;
- Implementation of a program to enhance inspection of stationary sources to ensure emissions control equipment is functioning properly;
- Implementation of Stage I Vapor Control;
- Implementation of Stage II Vapor Recovery;
- Open burning restrictions during ozone season;
- Implementation of fuel programs, including incentives for alternative fuels;
- Restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emissions concentration, particularly during periods of peak use;
- Programs for new construction and major reconstruction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

In addition, the maintenance plan includes specific provisions that in the event that a violation of the 8-hour ozone design value is measured in any portion of the maintenance area, or if periodic emissions inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, Kentucky will evaluate existing control measures to see if any further emissions reduction measures should be implemented at that time.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Kentucky for Christian County meets the requirements of section 175A of the CAA.

VII. What is an Adequacy Determination and What is the Status of EPA's Adequacy Determination for Christian County's new MVEBs for the years 2004 and 2016?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.*, reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR Part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Christian County's 12-year maintenance plan submission contained new VOC and NO_X MVEBs for the years 2004 and 2016. The availability of the SIP submission with these 2004 and 2016 MVEBs was announced for public comment on EPA's adequacy Web page on March 29, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on the adequacy of the 2004 and 2016 MVEBs for Christian County, Kentucky closed on April 28, 2005. EPA did not receive any adverse comments or requests for the submittal.

Through this rulemaking, EPA is finding adequate and approving those MVEBs for use to determine transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. These MVEBs will be separate state area budgets for the Christian County, Kentucky area. The State of Tennessee will establish MVEBs for the Montgomery County portion of the Clarksville-Hopkinsville area through the Tennessee SIP. The following table defines the 2004 and 2016 MVEBs for Christian County, Kentucky.

CHRISTIAN COUNTY 8-HOUR OZONE MAINTENANCE AREA MVEBS

	2004	2016
NO_X (tpd)	9.53	3.83
VOC (tpd)	3.83	2.08

VIII. Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Approval of the 2004 and 2016 MVEBs

EPA is making a determination that the Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS. EPA is approving the redesignation of the Christian County, Kentucky portion of the area from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating Kentucky's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation request and monitoring data demonstrate that the Clarksville-Hopkinsville area (of which Christian County is a part) has attained the 8-hour ozone standard. The final approval of this redesignation request would change the official designation for the Christian County area from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision. Approval of the maintenance plan for Christian County is allowable, because Kentucky has demonstrated that that the plan meets the requirements of section 175A as described more fully in this rulemaking. Additionally, EPA is finding adequate and approving the new 2004 and 2016 MVEBs, submitted by Kentucky for Christian County, in conjunction with its redesignation request. Within 18 months from the effective date of this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e). EPA is publishing this rule without prior approval, because the Agency views this action as noncontroversial and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register**, EPA is publishing a proposal to approve the redesignation and maintenance plan that will serve as the proposal if adverse comments are filed. This rule will be effective on November 21, 2005 unless EPA receives adverse comments by October 24, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register**, informing the public that the rule will not take effect. EPA will address the public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health

Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects:

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 13, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 and 81 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(e) is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance plan for the Christian County, Kentucky area'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED KENTUCKY NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision name of nonregulatory SIP	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date	Explanation
* *	* *	*	*	*
8-Hour Ozone Maintenance plan for the Christian County, Kentucky area.	Christian County	05/20/2005	09/22/2005 [Insert FR page citation of publication].	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.318, the table entitled ''Kentucky-Ozone (8-Hour Standard)'' is amended by revising the entry for ''Clarksville-Hopkinsville, TN–KY: Christian County'' to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/Classification	
	Date [1]	Type	Date [1]	Type
* * *	*	*	*	*
Clarksville-Hopkinsville, TN–KY Area:				
Christian County	10/24/05	Attainment.		
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 05–18959 Filed 9–21–05; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–TN–0007–200527(a) FRL–7973–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Montgomery County, Tennessee Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On August 10, 2005, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a final request: To redesignate the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and to approve a Tennessee State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Montgomery County, Tennessee. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is comprised of two counties (i.e., Christian County, Kentucky and Montgomery County, Tennessee). EPA is approving the 8-hour ozone redesignation request for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. Additionally, EPA is approving the 8-hour ozone maintenance plan for Montgomery County, Tennessee. This approval is based on EPA's determination that the State of Tennessee has demonstrated that Montgomery County, Tennessee has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On March 21, 2005, the Commonwealth of Kentucky submitted a redesignation request and maintenance plan for the Christian County, Kentucky portion of this area for EPA parallel processing. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Montgomery County, Tennessee. EPA is approving such MVEBs.

DATES: This rule is effective on November 21, 2005, without further notice, unless EPA receives adverse written comments by October 24, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2005–TN–0007, 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://docket.epa.gov/rmepub/RME.* EPA's electronic public docket and comment system is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.
3. E-mail: *hoffman.annemarie@epa.gov* or *wood.amanetta@epa.gov.*
4. Fax: (404) 562–9019.
5. Mail: ''R04–OAR–2005–TN–0007,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
6. Hand Delivery or Courier. Deliver your comments to: Anne Marie Hoffman or Amanetta Wood, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2005–TN–0007. 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://docket.epa.gov/rmepub/,* 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* 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 RME or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman of the Regulatory Development Section or Amanetta Wood of the Air Quality Modeling and Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074 or (404) 562–9025. Ms. Anne Marie Hoffman can be reached via electronic mail at *hoffman.annemarie@epa.gov.* Ms. Amanetta Wood can also be reached via electronic mail at *wood.amanetta@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What are the Actions EPA is Taking?
II. What is the Background for the Actions?
III What are the Redesignation Review Criteria?
IV. Why is EPA Taking These Actions?
V. What is the Effect of EPA's Actions?
VI. What is EPA's Analysis of the Request?
VII. What is an Adequacy Determination and What is the Status of EPA's Adequacy Determination for the Montgomery County's Proposed New MVEB for the Year 2016?
VIII. Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Approval of the 2016 MVEBs
IX. Statutory and Executive Order Reviews

I. What Are the Actions EPA Is Taking?

Through this rulemaking, EPA is taking several related actions. EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and the Montgomery County, Tennessee portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Clarksville-Hopkinsville area is a basic 8-hour nonattainment ozone area. Montgomery County is located in the Clarksville-Hopkinsville, Tennessee-Kentucky Metropolitan Statistical Area, which contains Christian County, Kentucky and Montgomery County, Tennessee. EPA is approving a request to change the legal designation of Montgomery County, Tennessee from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also approving Tennessee's 8-hour ozone maintenance plan for Montgomery County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Clarksville-Hopkinsville area (of which Montgomery County is a part) in attainment for the 8-hour ozone NAAQS for the next 12 years.

Additionally, through this rulemaking, EPA is announcing its action on the Adequacy Process for the newly-established 2016 MVEBs for Montgomery County, Tennessee. The Adequacy comment period for the 2016 MVEBs began on July 12, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/transp/conform/adequacy.htm*). The Adequacy comment period for these MVEBs closed on August 11, 2005. No requests or adverse comments on this submittal were received during EPA's Adequacy comment period. Please see section VII of this rulemaking for further explanation of this process.

II. What Is the Background for the Action?

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e. 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I,

> ''Comparisons with the Primary and Secondary Ozone Standards'' states: ''The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.''

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Clarksville-Hopkinsville 8-hour ozone nonattainment area was designated using 2001 to 2003 ambient air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which covers areas that EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which covers areas that EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject

only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase-1 8-Hour Ozone Implementation Rule, signed on April 15, 2004, an area was to be classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values. The Clarksville-Hopkinsville area was originally designated as a ''basic'' 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) and is subject to subpart 1 of part D. In 2004, the ambient ozone data for the interstate Clarksville-Hopkinsville nonattainment area indicated no further violation of the 8-hour ozone standard, using data from the 3-year period of 2002–2004 (with the 2002–2004 design value of 0.082 ppm), to demonstrate attainment. Available preliminary monitoring data through August 2005 indicates continued attainment of the 8-hour ozone standard.

On March 21, 2005, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted a request for parallel processing and on May 20, 2005, submitted a final request: (1) To redesignate the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone NAAQS, and (2) for EPA approval of a Kentucky State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Christian County, Kentucky. EPA is taking action on the request to redesignate the Kentucky portion of the area (*i.e.*, Christian County) to attainment for the 8-hour ozone NAAQS in a separate action.

On August 10, 2005, the State of Tennessee requested redesignation to attainment for the 8-hour ozone standard for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville interstate 8-hour ozone area. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons of 2002 through 2004, indicating the 8-hour ozone NAAQS had been achieved for the Clarksville-Hopkinsville area (of which Montgomery County, Tennessee is a part). The ozone season for this area is from April 1 until September 30 of a calendar year. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Redesignation Review Criteria?

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

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

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas, Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On August 10, 2005, the State of Tennessee requested redesignation of the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA believes that the State of Tennessee has demonstrated that Montgomery County, Tennessee (as part of the Clarksville-Hopkinsville area) has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of CAA.

V. What Is the Effect of EPA's Actions?

Approval of this redesignation request would change the official designation of Montgomery County, Tennessee for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Tennessee SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2016. The maintenance plan includes contingency measures to remedy future violations of

the 8-hour ozone NAAQS, and would establish MVEBs of 3.00 tons per day (tpd) for VOC and 9.05 tpd for NO_X for the year 2016.

VI. What Is EPA's Analysis of the Request?

EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The basis for EPA's determination is as follows:

(1) *The Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS.*

EPA is making the determination that the area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

KDAQ, on behalf of Tennessee, submitted ozone monitoring data to EPA for the ozone season from 2002 to 2004. There is currently one monitor measuring ozone, located within Christian County, Kentucky, which provides air quality data for the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area. The State of Tennessee relies on Kentucky's monitoring data for this area. This data has been quality assured and is recorded in AQS. The fourth-highest averages for 2002, 2003 and 2004, and the 3-year average of these values (*i.e.,* design value), are summarized in the following table:

County	2002	2003	2004	2002–2004
Christian	0.093	0.080	0.074	0.082

Available preliminary monitoring data through August 2005 indicates continued attainment of the 8-hour ozone standard. In addition, as discussed below with respect to the maintenance plan, KDAQ has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Kentucky provides an adequate demonstration that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS.

(2) *Tennessee has a fully approved SIP under section 110(k) for Montgomery County and (5) has met all applicable requirements under section 110 and part D of the CAA.* Below is a summary of how these two criteria were met.

EPA has determined that Tennessee has met all applicable SIP requirements for Montgomery County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Tennessee SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. *Montgomery County, Tennessee has met all applicable requirements under section 110 and part D of the CAA.* The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, MO).

General SIP requirements: Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. These requirements are discussed in the following EPA documents: ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum

from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also guidance documents listed in section III above.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). In addition, Tennessee's response to the CAIR rule is not due until September 2006.

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, EPA also notes that it has previously approved provisions in the Tennessee SIP addressing section 110 elements under the 1-hour standard (45 FR 53809, August 13, 1980; 47 FR 27267, June 24, 1982). EPA believes that the section 110 SIP approved for the 1-hour standard is sufficient to meet requirements under the 8-hour standard as well.

Part D requirements: EPA has also determined that the Tennessee SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Clarksville-Hopkinsville area.

Part D, subpart 1 applicable SIP requirements: For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). None of the requirements under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1), reasonable further progress (RFP) (section 172(c)(2)) and contingency measures (section 172(c)(9)).

In addition to the fact that these part D requirements did not become due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and new source review requirements as not requiring approval prior to redesignation.

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

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995, Tampa, FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' The State has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the area upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. *The area has a fully approved applicable SIP under section 110(k) of the CAA.* EPA has fully approved the applicable Tennessee SIP for the Montgomery County area under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request, Calcagni Memo

at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Montgomery County area (45 FR 53809, August 13, 1980 and 49 FR 1342, January 11, 1984). As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

(3) *The air quality improvement in the Clarksville-Hopkinsville 8-hour ozone area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.*

EPA believes that the State has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2001–2004, have reduced local VOC and NO_X emissions and brought the area into attainment:

—Federal Motor Vehicle Control Standards in Tennessee;
—EPA's Tier 2/Low Sulfur Gasoline program;
—EPA's Heavy-Duty Engine and Vehicle and Fuel Standards;
—Federal controls on certain nonroad engines implemented during the 2002–2004 period;
—Reductions due to the NO_X SIP Call;

In addition to the reductions mentioned above, the State of Tennessee is also relying on the following controls to maintain the 8-hour standard:

—Prevention of Significant Deterioration requirements;
—Federal controls on certain nonroad engines after 2000;
—Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions will also contribute to maintaining the standard in the area.

The State has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO_X emissions. Most of the reductions are attributable to Federal programs such as EPA's Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, the State has indicated in its submittal that the Clarksville-Hopkinsville area has benefited from emissions reductions that have been achieved and will continue to be achieved through implementation of the NO_X SIP Call, beginning in 2002. The State has also demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvement in ozone levels. Also, the following non-highway mobile source reduction programs were implemented during the 2002–2004 period: small spark-ignition engines, large-spark ignition engines, locomotives and land-based diesel engines. EPA believes that permanent and enforceable emissions reductions in and surrounding the nonattainment area are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard.

(4) *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.* In conjunction with its request to redesignate the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment status, TDEC submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Montgomery County area for at least 10 years after the effective date of redesignation to attainment.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum, dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

b. Attainment Emissions Inventory

The Clarksville-Hopkinsville area has selected 2004 as ''the attainment year'' for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2004 VOC and NO_X emissions for the Montgomery County area were developed consistent with EPA guidance and are summarized in the table in the following subsection.

c. Maintenance Demonstration

The August 10, 2005, submittal includes a 12-year maintenance plan for Montgomery County. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which the Clarksville-Hopkinsville area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future inventory projected years for 2007, 2010, 2013, and 2016.

(iii) Identifies an ''out year,'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, a MVEB was established for the last year of the maintenance plan. See section VII below.

(iv) Provides the following actual and projected emissions inventories for Montgomery County.

NO_X EMISSIONS (TPD) FOR MONTGOMERY COUNTY

Source category	2004	2007	2010	2013	2016
Point	0.79	0.90	0.99	1.08	1.18
Area	1.26	1.27	1.26	1.27	1.27
Mobile	12.39	10.52	8.54	6.38	4.88
Nonroad	4.22	3.95	3.63	3.33	2.99
Total	18.66	16.65	14.42	12.06	10.32
Safety Margin	.....	2.02	4.25	6.61	8.34

VOC EMISSIONS (TPD) FOR MONTGOMERY COUNTY

Source category	2004	2007	2010	2013	2016
Point	2.22	2.45	2.64	2.90	3.18
Area	11.60	12.10	12.40	12.90	13.30
Mobile	5.27	4.35	3.68	3.15	2.82
Nonroad	1.46	1.32	1.14	1.00	0.90
Total	20.56	20.22	19.86	19.95	20.20
Safety Margin	.....	0.34	0.70	0.61	0.36

A safety Margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS.

d. Monitoring Network

There is currently one monitor measuring ozone, located within Christian County, Kentucky, which provides air quality data for the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area. The Commonwealth of Kentucky has committed in its maintenance plan to continue operation of the ozone monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Kentucky's approved SIP commitment satisfies Tennessee's obligation for continued monitoring for the Clarksville-Hopkinsville area.

e. Verification of Continued Attainment

The State has the legal authority to enforce and implement the requirements of the ozone maintenance plan for Montgomery County, Tennessee. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Tennessee will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories the State will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the State will re-project emissions.

g. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the August 10, 2005, submittal, Tennessee affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Clarksville-Hopkinsville nonattainment area, the State of Tennessee commits to develop regulations for at least one of the following control measures for submission to the EPA within nine months. The State will also submit a control plan to EPA within twelve months. All regulatory programs will be implemented in twenty-four months from a measured violation. The State will consider one or more of the following contingency measures to re-attain the standard.

- RACT for NO_X sources.
- Programs or incentives to decrease motor vehicle use.
- Trip reduction ordinances.
- Implementation of a program to require additional emissions reductions on stationary sources.
- Implementation of a program to enhance inspection of stationary sources to ensure emissions control equipment is functioning properly.
- Implementation of fuel programs, including incentives for alternative fuels.
- Restrictions of certain roads or lanes for, or construction of such roads or lanes for use by, passenger buses or high—occupancy vehicles.
- Employer-based transportation management plans, including incentives programs to limit or restrict vehicle use in downtown areas, or other areas of high emissions concentration, particularly during periods of peak use.
- Programs for new construction and major reconstruction of paths for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

In addition, the maintenance plan provides that in the event that a measured violation of the 8-hour ozone design value occurs in any portion of the maintenance area, or if periodic emissions inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, the State will evaluate existing control measures to see if any further emissions reduction measures should be implemented at that time.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Tennessee for Montgomery County meets the requirements of section 175A of the CAA.

VII. What Is an Adequacy Determination and What is the Status of EPA's Adequacy Determination for Montgomery County's Proposed New MVEBs for the Year 2016?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.* reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Montgomery County's 12-year maintenance plan submission contained new VOC and NO_X MVEBs for the year 2016. The availability of the SIP submission with the 2016 MVEBs was announced for public comment on EPA's adequacy Web page on July 12, 2005, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm*. The EPA public comment period on the adequacy of the 2016 MVEBs for Montgomery County, Tennessee closed on August 11, 2005. EPA did not receive any adverse comments or requests for the submittal.

Through this rulemaking, EPA is finding adequate and approving those MVEBs for use to determine transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. These MVEBs will be separate state area budgets for the Montgomery County, Tennessee area. The Commonwealth of Kentucky has established MVEBs for the Christian County portion of the Clarksville-Hopkinsville area through the Kentucky SIP. The following table defines the 2016 MVEBs for Montgomery County, Tennessee.

MONTGOMERY COUNTY 8-HOUR OZONE MAINTENANCE AREA MVEBS

	2016
NO_X (tpd)	9.05
VOC (tpd)	3.00

VIII. Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Approval of the 2016 MVEBs

EPA is making the determination that the Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS. EPA is approving the redesignation of the Montgomery County, Tennessee portion of the area from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating the State of Tennessee's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that the Clarksville-Hopkinsville area (of which Montgomery County is a part) has attained the 8-hour ozone standard. The final approval of this redesignation request would change the official designation for the Montgomery County area from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision. Approval of the maintenance plan for Montgomery County is allowable, because the State of Tennessee has demonstrated that the plan meets the requirements of section 175A as described more fully in this rulemaking. Additionally, EPA is finding adequate and approving the new 2016 MVEBs, submitted by Tennessee for Montgomery County, in conjunction with its redesignation request. Within 24 months from the effective date of this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e). EPA is publishing this rule without prior approval because the Agency views this as noncontroversial and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register** EPA is publishing a proposal to approve the redesignation and maintenance plan that will serve as the proposal if adverse comments are filed. This rule will be

effective on November 21, 2005 unless EPA receives adverse comments by October 24, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address the public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: September 13, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 and 81 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for ''8-Hour Ozone Maintenance plan for the Montgomery County, Tennessee area'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
*	*	*	*	*
8-Hour Ozone Maintenance plan for the Montgomery County, Tennessee area.	Montgomery County	08/10/2005	09/22/2005 [Insert first page of publication]	

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.318, the table entitled ''Tennessee-Ozone (8-Hour Standard)'' is amended by revising the entry for ''Clarksville-Hopkinsville, TN–KY: Montgomery County'' to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE

[8-Hour Standard]

Designated area	Designation [a]		Category/Classification	
	Date [b]	Type	Date [b]	Type
*	*	*	*	*
Clarksville-Hopkinsville, TN–KY Area:				
Montgomery County	October 24, 2005	Attainment.		
*	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 05–18953 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2003–0119; FRL–7971–9]

RIN 2060–AN31

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendments.

SUMMARY: The EPA has completed its reconsideration of certain regulatory definitions that determine the type of sources subject to EPA's new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the Clean Air Act (CAA). With this action, EPA is promulgating revised definitions for the terms ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration unit.'' The final CISWI definitions of these terms promulgated today are consistent with EPA's February 2004 reconsideration proposal in that EPA will continue to identify CISWI units based on whether such units combust waste without energy recovery. However, the revised definitions promulgated today do not include certain regulatory language proposed in February 2004 to include units with only waste heat recovery in the CISWI source category. In a subsequent rulemaking action, EPA intends to propose additional regulatory language to address units with only waste heat recovery and assess the impacts of the inclusion of these units in the CISWI source category. As a result of our action today on the CISWI definitions, it is not necessary to make any corresponding revisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters.

DATES: The final rule is effective September 22, 2005.

ADDRESSES: *Docket:* EPA has established a docket for this action under Docket ID No. OAR–2003–0119. 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 EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Shrager, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–7689; e-mail address: *shrager.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by November 21, 2005. Under section 307(d)(7)(B) of the CAA, only an

objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
A. Does this action apply to me?
II. Summary of Final Action
III. Background Information
A. Statutory Background
B. Regulatory Background
C. Significance of the Definitions
IV. Final Definitions for the CISWI Rules
V. Response to Public Comments and Significant Changes
A. General Comments on Definitions
B. Comments on the Definition of CISWI Unit
C. Comments on the Definition of Commercial or Industrial Waste
D. Comments on the Definition of Solid Waste
E. Comments on the Rulemaking Process
VI. Relationship to NESHAP for Boilers and Process Heaters
VII. Impacts of the Final Rules
VIII. Future Actions on the Final CISWI Rules
IX. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. General Information

A. Does This Action Apply to Me?

Regulated Entities. The CISWI rules potentially affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any industry using a solid waste incinerator as defined in the regulations.	325	28	Manufacturers of chemicals and allied products.
	335	36	Manufacturers of electronic equipment.
	421	50	Manufacturers of wholesale trade, durable goods.
	321, 337	24, 25	Manufacturers of lumber and wood furniture.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists examples of the types of entities that could be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, or business organization is regulated by this action, you should examine the final definitions of ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration unit'' in this action and the applicability criteria in 40 CFR 60.2010 through 60.2025, subpart CCCC, and 40 CFR 60.2505 and 60.2550 through 60.2558, subpart DDDD.

Docket. The docket number for this action is OAR–2003–0119.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the notice of final rules is available on the WWW through the Technology Transfer Network Web site (TTN Web). Following signature, EPA will post a copy of the notice of final rules on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn.* The TTN provides information and technology exchange in various areas of air pollution control.

II. Summary of Final Action

By this action, EPA concludes the reconsideration process on the December 2000 final CISWI rules that it initiated in February 2004, in response to a petition for reconsideration submitted pursuant to section 307(d)(7)(B) of the CAA. Specifically, the EPA has concluded its reconsideration of several definitions that determine which types of sources are subject to the NSPS and EG for CISWI units under section 129 of the CAA.

EPA promulgated the definitions in the final rules for CISWI units on December 1, 2000. Subsequent to promulgation of the final CISWI rules, the Agency granted a petition for reconsideration related to the definitions of ''commercial and industrial waste'' and ''commercial and industrial solid waste incineration unit'' in the CISWI final rules. EPA solicited public comments on revised definitions for these terms and the definition of ''solid waste'' in a notice published in the **Federal Register** on February 17, 2004. (See 69 FR 7390.) In that notice, we requested comments on the approach we used in the December 2000 final rules to identify CISWI units based on whether the unit was combusting solid waste without energy recovery. We also proposed to include units with only waste heat recovery in the CISWI source category to fill a gap between our CISWI rules and our NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters promulgated under CAA section 112.

In addition, after promulgation of the final CISWI rules in 2000, EPA accepted a voluntary remand, without vacature, in response to a petition for review challenging the rules. Because the final rules were not vacated, the requirements of the final CISWI rules remain in effect during the remand. In a future rulemaking action on the remand, we will reconsider the emissions limitations for CISWI units in accordance with guidelines set forth in a related court decision pertaining to hazardous waste combustors which was issued after we promulgated the final CISWI rules. However, before we may complete the rulemaking action on remand, it is necessary to resolve the issues raised in the petition for reconsideration that potentially affect the scope of the CISWI source category. This is because EPA must consider the emissions of the best performing sources in the source category to determine the applicable emissions limitations. Thus, we are announcing today our final decision after reconsidering the definitions that determine the scope of the CISWI source category so that we may focus on the relevant sources in our rulemaking action on the remand. Today's action amends the final rules to incorporate new definitions of ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration unit.'' In the discussion below, we set forth and explain the language in the new definitions.

The definitions we are promulgating today are nearly the same as those

proposed on February 17, 2004. (See 69 FR 7396.) However, in response to comments received, we clarified the proposed definition of ''commercial or industrial waste'' and made editorial changes to other definitions to reduce repetition among the definitions and to better express our intent.

In addition, we removed the term ''waste heat recovery'' from the proposed definition of ''commercial or industrial waste'' and are not adopting a final definition of ''waste heat recovery'' at this time. We intend to propose additional language to address units with only waste heat recovery and to assess the impacts of including such sources in the CISWI source category during completion of our rulemaking action in response to the voluntary remand. At that time, EPA will also address several other issues relevant to the remand, such as the emissions limitations for the CISWI source category.

The revisions to the definitions adopted today are not intended to change the existing scope [1] of the CISWI source category. After further review on reconsideration, EPA continues to believe that the key consideration in determining whether a unit is burning commercial or industrial waste is the primary function of the combustion unit and that the primary indicator of function is whether or not a unit is designed and operated for energy recovery. We define energy recovery as the recovery of heat (thermal energy) for a useful purpose. Thus, we are not amending the definition of ''energy recovery'' that we promulgated in the December 2000 final CISWI rules.

Today's action also addresses a related question of whether EPA should amend regulations that determine the scope of the NESHAP for the Industrial, Commercial, and Institutional Boilers and Process Heaters source category (boilers NESHAP). Those regulations (40 CFR part 63, subpart DDDDD) were promulgated under CAA section 112. (See 69 FR 55218, September 13, 2004.) We determined that conforming amendments to the boilers NESHAP are not necessary because the definitions of ''boilers'' and ''process'' heaters in that rule are consistent with the CISWI definitions we are announcing today.

[1] The inclusion of waste heat recovery sources would change the scope of the CISWI source category if we take final action to include such sources in the CISWI source category in our response to the voluntary remand.

III. Background Information

A. Statutory Background

Section 129 of the CAA, entitled ''Solid Waste Combustion,'' requires EPA to promulgate emissions standards and other requirements for ''each category of solid waste incineration units'' (42 U.S.C. 7429(a)(1)). Section 129(a)(1) of the CAA identifies five categories of solid waste incineration units:

(1) Units with a capacity of greater than 250 tons per day combusting municipal waste;

(2) Units with a capacity equal to or less than 250 tons per day combusting municipal waste;

(3) Units combusting hospital, medical and infectious waste;

(4) Units combusting commercial or industrial waste; and

(5) Unspecified ''other categories of solid waste incineration units.''

For each category of incineration unit identified under CAA section 129, EPA must establish numerical emission limits for at least nine specified pollutants (particulate matter (PM), sulfur dioxide (SO_2), hydrogen chloride (HCl), oxides of nitrogen (NO_X), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins and dibenzofurans) and for opacity as appropriate. Section 129 provides EPA with the discretion to establish emissions limitations for other pollutants as well.

Section 129 of the CAA directs EPA to set maximum achievable control technology (MACT) type standards for incinerators. EPA's standards under section 129 must ''reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) (identified above) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category.'' (See CAA section 129(a)(2).) However, the standards for new units must not be ''less stringent than the emissions control that is achieved in practice by the best controlled similar unit,'' and the standards for existing sources must not be ''less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category.'' (See CAA section 129(a)(2).)

In addition, the statute provides some guidance on which units EPA should and should not regulate under CAA section 129. However, the statute does not define ''commercial or industrial waste.'' Section 129(g)(1) of the CAA defines the term ''solid waste incineration unit'' as a unit ''which combusts any solid waste material from commercial or industrial establishments or the general public.'' Section 129(g)(1) also identifies several types of units that are not solid waste incineration units, including units required to have a permit under section 3005 of the Solid Waste Disposal Act (SWDA); materials recovery facilities; certain qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste; and certain air curtain incinerators that meet opacity limitations established by EPA.

Furthermore, CAA section 129(g)(6) states that the term ''solid waste * * * shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act.'' Finally, CAA section 129(h) states that ''no solid waste incineration unit subject to performance standards under this section and section 111 shall be subject to standards under section 112(d) of this Act.''

B. Regulatory Background

One important part of EPA's rulemaking process is determining what universe of sources will be subject to regulation. With regard to CISWI units, the statutory provisions of CAA sections 129(a), (g) and (h) collectively provide that EPA must determine, as a part of the regulatory process, which combustion units should be subject to regulation under section 129. Section 129 does not resolve this question, but it does provide some important guiding principles. For example, section 129(g)(1) provides that a solid waste incineration unit does not include incinerators or other units required to have a permit under section 3005 of the SWDA, which includes any units burning hazardous solid wastes. This statutory language effectively limits the scope of EPA's authority under section 129 to the regulation of solid waste incineration units that burn nonhazardous solid waste. Similarly, the language of section 129(h) makes clear the Congressional intent for EPA to regulate nonhazardous combustion sources under either section 129 or section 112, but not both. Thus, for the CISWI source category, in particular, EPA must determine which sources are commercial and industrial solid waste incineration units under section 129, and which combustion units are subject to section 112, such as boilers and process heaters.

The EPA proposed regulations for CISWI units on November 30, 1999. (See 64 FR 67092.) The proposal included

emissions limitations and a detailed definition of ''solid waste'' that was intended to distinguish between nonhazardous solid wastes and other materials (*e.g.*, hazardous solid waste and fuel) burned in combustion units at commercial or industrial facilities. The definition served to identify those units that would be considered commercial and industrial nonhazardous solid waste incineration units, and, therefore, subject to the proposed regulations. In addition, consistent with CAA section 129(h), these definitions also helped to identify those units which would not be subject to emission standards under CAA section 112.

After receiving public comment, EPA determined that the 1999 proposed definition of ''solid waste'' was unworkable for purposes of identifying CISWI units. Instead of adopting the proposed definition of ''solid waste,'' EPA adopted a general definition of ''solid waste'' that closely mirrored the definition of solid waste found at section 6903(27) of the SWDA and in several places in EPA's regulations under that statute. (See 65 FR 75338, December 1, 2000.) EPA also adopted more specific definitions of ''commercial and industrial waste'' and ''commercial and industrial solid waste incineration unit,'' to identify more precisely those units at commercial and industrial facilities covered by the final CISWI rules.

Under the December 2000 final CISWI rules, a material burned at a commercial or industrial facility in a combustion unit without energy recovery is a commercial or industrial waste, and the unit is subject to the CISWI rules. However, a material burned at a commercial or industrial facility in a combustion unit with energy recovery is not considered a commercial and industrial waste, nor is the combustion unit considered a commercial and industrial solid waste incineration unit for purposes of the CISWI rules.[2]

After promulgation of the final CISWI rules, EPA received a petition for reconsideration of the final rules. The petition argued that the final rules were procedurally defective because EPA had failed to provide adequate notice and an opportunity to comment on the definitions adopted in the final rulemaking. Additionally, an environmental organization filed a petition for review in the U.S. Court of Appeals for the D.C. Circuit. Furthermore, after promulgation of the final CISWI rules, the D.C. Circuit issued its decision in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (D.C. Cir. 2001). In this decision, the Court rejected certain common elements of EPA's MACT methodology. As a result, EPA requested a voluntary remand of the final CISWI rules, in order to address concerns related to the issues that the Court had raised in the Cement Kiln decision.

The EPA granted the petition for reconsideration on the definitional issues. On February 17, 2004 (69 FR 7390), EPA initiated proceedings on the definitional issues by publishing a notice to solicit comments on revisions to the definitions of ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration unit'' and a new definition of the term ''waste heat recovery.'' The February 17, 2004 notice proposed the following definitions:

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Commercial or industrial waste means solid waste (as defined in this subpart) combusted for reasons that do not include the recovery of heat for a useful purpose, or combusted without heat recovery or with only waste heat recovery (*i.e.*, no heat recovery in the combustion firebox), in an enclosed unit using controlled flame combustion that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air); or solid waste combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in section 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

Waste heat recovery means the process of recovering heat from the combustion flue gases by convective heat transfer only.

These definitions were similar to the definitions in the December 1, 2000 final CISWI rules, except that we proposed that materials combusted at commercial or industrial facilities in units with only waste heat recovery would be considered commercial or industrial waste and that such units would become subject to the CISWI rules. This proposed change addressed an unintended regulatory gap where units with only waste heat recovery were not covered by CAA section 112 boilers NESHAP or by the CISWI rules. The statutory and regulatory background and rationale for the proposed changes to the definitions are fully described in the February 17, 2004 notice of proposed rule and solicitation of comments. (See 69 FR 7390.)

The action published today summarizes and responds to public comments received in response to the February 17, 2004 notice and announces EPA's final decisions on the definitions of ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration (CISWI) unit'' for the CISWI rules. The specific wording of the final definitions

[2] In addition, EPA adopted a number of specific exemptions and additional definitions in the final CISWI rules, to ensure that the emissions limitations did not apply to units that should not be considered commercial and industrial solid waste incineration units. These exemptions and definitions served to identify and exempt: (1) Pathological solid waste incineration units; (2) agricultural solid waste incineration units: (3) municipal solid waste incineration units; (4) hospital, medical and infectious solid waste incineration units; (5) qualifying small power production facilities; (6) qualifying cogeneration facilities; (7) hazardous solid waste incineration units; (8) material recovery units; (9) certain air curtain incinerators; (10) cyclonic barrel burners; (11) rack, part, and drum reclamation units; (12) cement kilns; (13) sewage sludge incinerators; (14) chemical recovery units; and (15) laboratory analysis units.

is printed later in this action. EPA is amending the CISWI rules such that the final definitions will take effect immediately. EPA is not taking final action today, however, on the February 2004 proposed addition of certain regulatory language concerning waste heat recovery units. EPA currently intends to propose additional language to amend the CISWI rules to cover units with only waste heat recovery when we take final action in response to the voluntary remand of the CISWI rules.

C. Significance of the Definitions

The definitions of ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration unit'' define the scope of applicability of the final CISWI rules. Since any unit regulated under CAA section 129 cannot be subject to any rule developed under CAA section 112, these definitions also help to clarify the scope of applicability of certain other rules that EPA has or will develop for other types of combustion units.

In this case, combustion units that are not covered by the final CISWI rules may be subject to regulation, for example, under the boilers NESHAP (40 CFR part 63, subpart DDDDD).[3] Many of the combustion units at commercial or industrial facilities (*e.g.*, boilers or steam generating units, process heaters, furnaces, and incinerators) burn ''solid'' materials. If the solid materials in question are covered by the definition of ''commercial or industrial waste,'' the units will be regulated as CISWI units under CAA section 129. Conversely, if the materials are not covered by the definition of ''commercial or industrial waste'' or if these materials are hazardous solid waste or solid materials burned for chemical or material recovery, the units will be regulated under CAA section 112 or other statutory authority.

The process of determining the regulatory dividing line between different rules is not unique to CISWI. Nor does the identification of the scope of one rule necessarily define the scope of another or preclude EPA from adjusting the regulatory division in a subsequent rule.

IV. Final Definitions for the CISWI Rules

For purposes of the CISWI rules, we are amending the definitions of the terms ''solid waste,'' ''commercial or industrial waste,'' and ''commercial and industrial solid waste incineration (CISWI) unit'' as follows:

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Commercial or industrial waste means solid waste (as defined in this subpart) that is combusted at any commercial or industrial facility using controlled flame combustion in an enclosed, distinct operating unit: (1) Whose design does not provide for energy recovery (as defined in this subpart); or (2) operated without energy recovery (as defined in this subpart). Commercial or industrial waste also means solid waste (as defined in this subpart) combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: (1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and (2) the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in section 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

The EPA will continue to define the term ''energy recovery'' as follows:

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

The major differences between the definitions we are promulgating today for the CISWI rules and those proposed on February 17, 2004 (69 FR 7396), are that we have removed the language in the proposed definition of ''commercial or industrial waste'' that served to include units with only waste heat recovery in the CISWI source category, and we are not promulgating the definition of ''waste heat recovery'' at this time. We are not taking final action today on these changes because we have not yet had an opportunity to assess the impacts of including units with waste heat recovery in the CISWI rules. An impacts assessment is necessary, but is best done when we respond to the CISWI remand and can perform comprehensive analyses that address the addition of waste heat recovery units, any questions on the applicability of the CISWI rules raised by promulgation of the CAA section 129 rules for the other solid waste incineration (OSWI) source category, and the remand issues regarding determination of the MACT floor and emission limits. When we respond to the remand of the CISWI rules, we currently plan to propose additional regulatory language to address units with only waste heat recovery and to provide opportunity for additional comment on the inclusion of these units in the CISWI source category.

Otherwise, as explained further below, we made editorial changes to the definition of ''commercial or industrial waste'' and other definitions to reduce repetition among the definitions and better express our intent. For example, we use the term ''energy recovery'' in the final definition of ''commercial or industrial waste'' to incorporate our existing definition rather than repeating the words ''recovery of heat for a useful purpose.''

V. Response to Public Comments and Significant Changes

Twelve public comment letters were received from a wide variety of sources, consisting mainly of government agencies, environmental organizations, industry and utility associations, and owner/operators of incinerators and

[3] Alternatively, such units might be subject to regulation under any number of other EPA regulations, including, for example, regulations promulgated pursuant to CAA section 112(c)(3) and (k) to control emissions from industrial, commercial and institutional boilers that are area sources and various other regulations developed under section 112 which cover combustion units burning solid materials to recover their chemical or other material constituents (*e.g.*, black liquor boilers or furnaces at kraft pulp mills covered under the national emission standards for hazardous air pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills).

other types of facilities. The most significant comments are summarized and addressed below. Other significant comments are summarized and addressed in a comment and response document contained in the docket.

A. General Comments on Definitions

Comment: One commenter stated that EPA's attempts to fabricate ambiguity in CAA section 129 are without merit. The commenter stated that, regardless of whether EPA has discretion to draw the line between different types of solid waste combustion units, the agency does not have the discretion to exempt any such units from regulation under section 129 (except for those expressly enumerated in section 129(g)(1)). The commenter added that, contrary to EPA's claim, the critical question is not whether a unit ''is designed and operated to recover heat for a useful purpose,'' but, rather, ''does the unit combust solid waste?'' Finally, the commenter added that, read as a whole, section 129 requires that the CISWI rules must apply to all combustion units that burn waste from commercial and industrial facilities. The commenter contended that EPA's narrow definitions of ''commercial or industrial waste'' and ''commercial and industrial solid waste incineration unit'' unlawfully exempt the majority of CISWI units from regulation under section 129. The commenter also pointed out that most CISWI units fall below the major source threshold established in CAA section 112(a). The commenter viewed EPA's definitions in the CISWI rules as an attempt to regulate many sources under section 112 instead of regulating all sources under section 129. Section 112 requires emissions standards based on generally available control technology (GACT) for non-major sources.

Response: EPA disagrees with the commenter. Contrary to the commenter's assertion, CAA section 129 is ambiguous because it does not contain definitions of certain terms. The EPA has reasonably interpreted section 129 in establishing the regulatory definitions described in this action. The statutory provisions of sections 129(a), (g), and (h) of the CAA collectively call for EPA to determine, as part of the regulatory process, which combustion units should be subject to regulation under section 129. Section 129 of the CAA directs EPA to promulgate standards under section 111 applicable to ''solid waste incineration units combusting commercial or industrial waste''. (See 42 U.S.C. 7429(a)(1)(D).) However, section 129 does not define commercial or industrial waste. Inherent in EPA's implementation of this statutory provision is the discretion to reasonably define what constitutes this undefined type of solid waste. Furthermore, CAA section 129(h) provides that nonhazardous combustion sources shall not be regulated under both section 129 and section 112. Thus, for the CISWI rules, EPA must determine which types of sources are included in the CISWI source category.

The distinction between CISWI units and non-CISWI combustion units is not readily apparent. For example, there is general agreement that burning coal in a coal-fired boiler is not commercial or industrial waste, because coal is commonly thought of as a fuel. However, there are many other materials that are burned in commercial and industrial boilers for energy recovery. Such materials include wood, other biomass, bagasse burned in boilers at sugar plants to produce the heat needed to refine sugar from sugar cane, and many other materials generated as part of commercial or manufacturing activities. When these materials are burned in a boiler to recover heat for a useful purpose, it is reasonable to consider these materials, like coal, to be a fuel and distinct from commercial and industrial solid waste. Combustion of such materials, when burned in a boiler that recovers energy for a useful purpose, is not considered waste combustion and is appropriately addressed under CAA section 112 regulations for boilers (*e.g.*, the boilers NESHAP and area source boilers standards). On the other hand, if materials were burned in a combustion unit without heat recovery, the combustion would serve no useful purpose other than destruction or disposal of an unwanted material, and EPA would then consider it appropriate to identify the material as a commercial or industrial waste and regulate the combustion unit under CAA section 129 as a CISWI unit.

In addition, many units that are designed and operated for energy recovery and predominantly burn materials that are widely considered fuels will occasionally fire small amounts of other materials in these units that could be considered waste in some circumstances. However, these units continue to recover energy from the combustion of these additional materials. Thus, it is not immediately clear how EPA should classify such units that are designed and operated for energy recovery but occasionally combust waste-like materials.

EPA has determined that for purposes of the final CISWI rules, the critical consideration in determining whether the unit is burning commercial or industrial waste is the primary function of the combustion unit; and the primary indicator of function is whether or not a unit is designed and operated to recover energy for a useful purpose. Accordingly, we are promulgating definitions of ''commercial or industrial waste'' and ''CISWI unit'' to include in the CISWI rules units whose design does not provide for energy recovery or that are operated without energy recovery. We continue to define energy recovery as the recovery of heat (thermal energy) for a useful purpose. The revised definition of ''commercial or industrial waste'' does not change the existing scope of the CISWI source category, but contains editorial revisions to more clearly express our intent, as described further below.

The determination that units (such as boilers) that recover energy for a useful purpose are not subject to the final CISWI rules does not exclude them from regulation. As noted earlier, EPA has already regulated commercial and industrial boilers and process heaters located at major sources under 40 CFR part 63, subpart DDDDD (the boilers NESHAP). EPA is addressing commercial and institutional boilers and process heaters located at area sources under the CAA section 112 area source boilers standards, currently under development. Additionally, other categories of specialty combustion units, such as hazardous waste combustors and cement kilns are regulated under separate section 112 NESHAP. Section 112 addresses hazardous air pollutants such as hazardous metals, organic compounds, and HCl.

Comment: One commenter pointed out that despite EPA's claim that it has ''considerable discretion to regulate a variety of sources as solid waste incinerators,'' CAA section 129(a)(1) requires EPA to ''establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units.'' (See 42 U.S.C. 7429(a)(1)(A) (emphasis added).) The commenter believes these categories are very broad, based on language in section 129(g)(1), which defines ''solid waste incineration unit'' to mean ''a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments.'' (See 42 U.S.C. 7429(g)(1).) The commenter also argued that the text of section 129 shows that Congress expressly considered the issue of whether to regulate heat recovery units under section 129 by providing only limited, specific exemptions. Thus, according to the commenter's

interpretation of the statute, EPA must set section 129 standards for any unit that combusts any solid waste, with the narrow exception of the categories of energy recovery units specifically enumerated in section 129(g)(1). The commenter also asserts that EPA acknowledged this position in the hospital, medical, and infectious waste incinerator (HMIWI) rules, by stating the following:

> The EPA disagrees with commenters that contend EPA has no authority to regulate cement kilns under section 129. Section 129(a)(1)(A) requires the Administrator to establish performance standards and other requirements for each category of solid waste incineration units. Congress specifically listed in section 129 various categories of solid waste incineration units that EPA must regulate. Section 129(g)(1) broadly defines solid waste incineration unit as ''a distinct operating unit of any facility which combusts any solid waste material * * *'' This definition clearly indicates Congress' intent to regulate more than just incinerators because the definition sweeps within its scope any facility that is combusting any solid waste.

Response: Inherent in EPA's implementation of CAA section 129 is the discretion to identify the types of sources covered by the statutorily undefined category of commercial or industrial solid waste incineration units. Considered as a whole, the statutory provisions of section 129(a), (g), and (h) require that EPA determine, as part of the regulatory process, which combustion units should be subject to regulation under section 129. For example, as explained in the previous response, EPA has determined that boilers combusting materials for energy recovery are subject to section 112 and hence, are not subject to section 129.

The commenter relies on the statutory definition of solid waste incineration unit to argue that any unit combusting any solid waste at any time should be covered under CISWI. However, we do not agree with this broad interpretation of the definition of ''solid waste incineration unit'' based on the use of the modifier ''any.'' We believe the word ''any'' should be interpreted within the broader frame of reference of its statutory context, consistent with observations of the Supreme Court in *Nixon* v. *Missouri Municipal League*, 541 U.S. 125, 124 S. Ct. 1555 (2004). In this recent opinion, the Court observed that Congress's understanding of ''any'' can differ depending on the statutory setting. (See 124 S. Ct. at 1561.) *Nixon* and a related line of cases support looking for indications in the statute that suggest a more limited meaning of the modified term is possible or intended. (See 70 FR 33838, 33842 (June 10, 2005).) Indications of a more limited meaning can be found within the definition of solid waste incineration unit in CAA section 129(g)(1) and CAA section 129(h).

The commenter argues that EPA should stop reading the definition of ''solid waste incineration unit'' in CAA section 129(g)(1) after the phrase ''any solid waste material.'' Thus, according to the commenter, a CISWI unit must include ''any facility which combusts any solid waste material.'' However, the commenter fails to give meaning to the remainder of the sentence in section 129(g)(1), which provides that a solid waste incineration unit under section 129 includes a facility that combusts ''any solid waste material from commercial or industrial establishments.'' There is a distinction between ''any solid waste material'' and ''any solid waste material from commercial or industrial establishments.'' In order to identify solid waste material from commercial and industrial establishments, we have promulgated a definition of ''commercial or industrial waste'' which incorporates the broader definition of ''solid waste.'' As discussed in the earlier response, because it is sometimes not obvious whether a commercial and industrial establishment treats material as a waste or as a fuel, we have developed the definition of commercial or industrial waste to identify solid waste from commercial and industrial establishments based on whether the waste is burned without energy recovery.

Moreover, we do not agree that the ''small power production facilities'' or ''qualifying cogeneration facilities'' described in CAA section 129(g)(1) are the only types of energy recovery facilities that are properly excluded from the CISWI source category. To the extent that another type of energy recovery facility is not considered to be combusting solid waste from a commercial and industrial establishment, that facility should also be excluded from the CISWI source category. We do not read section 129(g)(1) to establish an exclusive list of excluded sources. See *National Wildlife Federation* v. *Gorsuch*, 693 F.2d 156, 172 (D.C. Cir. 1982) (use of the term ''includes'' allows for additional, unstated meanings); *Chemehuevi Indian Tribe* v. *California St. Bd. of Equalization*, 757 F.2d 1047, 1054 (9th Cir. 1985), rev'd on different grounds, 106 S. Ct. 289 (1985) (''includes'' is a term of enlargement, not of limitation); *United States* v. *Huber*, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 100 S. Ct. 1312 (1980) (use of the word ''includes,'' rather than a more restrictive term such as ''means,'' indicates that the list is not exhaustive but merely illustrative).

Furthermore, the definition of ''solid waste incineration unit'' applies to all categories of units subject to CAA section 129. The enumerated exclusions in CAA section 129(g)(1) ensure that specific types of facilities are not included in any category under section 129. Thus, we do not read these exclusions to be an exclusive list of energy recovery facilities that are not included in the CISWI source category.

Furthermore, CAA section 129(h)(2) states that any unit subject to a section 129 standard cannot also be subject to a CAA section 112(d) standard. The rules of logic support the position that the contrapositive of that statement is equally true—any unit subject to a section 112(d) standard cannot also be subject to a section 129 standard. This indicates a Congressional intent not to give the word ''any'' the broad meaning suggested by the commenter because it would require that EPA periodically address units regulated by section 112 under section 129 at times when such units combust solid waste material, even if such units are designed and operated for energy recovery.

The quote cited by the commenter regarding cement kilns expressed EPA's position that we have the authority to regulate units under CAA section 129 based on their primary function. Thus, we indicated that if we determined that a unit, that might be called a cement kiln was actually functioning more like an incinerator, we would have the authority to regulate that unit under section 129 even though it was not identified as an incinerator. However, we did not make a finding at that time that we were required to regulate cement kilns under section 129 because they functioned as incinerators. In addition, it appears from the quote that we focused at that time only on the phrase ''any solid waste material'' without considering the additional language ''from commercial or industrial establishments'' that is relevant to the CISWI source category.

Ultimately, we determined that cement kilns should not be regulated in the final HMIWI rules, but instead should be regulated under CAA section 112. Cement kilns, including those burning nonhazardous solid waste for purposes of energy recovery, have been regulated since 1999 under the portland cement manufacturing industry NESHAP, which is based on MACT. The NESHAP regulates both major and area sources, and its requirements reduce emissions of PM, multiple metals,

dioxins/furans, and total hydrocarbons (which are a surrogate for other organic HAP including polycyclic organic matter (POM), benzene, toluene, and formaldehyde). The final rule has already been implemented and sources are complying with it. As discussed above, CAA section 129(h)(2) is clear that regulations under sections 129 and 112 are mutually exclusive. Accordingly, sources such as cement kilns, boilers and process heaters that are subject to section 112 standards are not CISWI units.

Comment: One commenter believes that electric steam generating units that are already subject to NSPS controls under 40 CFR part 60, subparts Da or Db, should not be subject to regulation under CAA section 129. The commenter stated that EPA did not consider electric utilities that co-combust solid waste with fuel in its rulemaking activities, and, therefore, EPA's regulatory impact analysis did not account for such units. The commenter urged EPA to clarify that the definitions of ''commercial or industrial waste'' and ''commercial and industrial solid waste incineration (CISWI) unit'' do not inadvertently result in the CAA section 129 program regulating electric utility boilers, including circumstances where such boilers co-combust very small amounts of nonhazardous solid waste with fuel during the production of power. An example is periodic boiler cleaning, when deposits that accumulate on the interior of boiler tube walls are removed with a cleaning agent. The resulting material is combusted in the boiler with fuel while the boiler is being operated to recover energy and produce power. Combustion is a highly effective method of destroying such materials. The commenter pointed out that EPA agreed with their comment on the November 1999 CISWI proposal that the regulatory text swept too broadly by potentially capturing the episodic circumstances in which electric utilities combust small amounts of such nonhazardous solid waste with fuel. The commenter also stated that the legislative history makes clear that Congress intended section 129 to apply only to units dedicated to solid waste combustion and cited specific legislative history supporting this point. The commenter further stated that application of section 129 to electric utility boilers would be at odds with CAA section 112, and the language of the CAA makes clear Congress's intent for EPA to regulate nonhazardous waste combustion sources under either CAA section 129 or CAA section 112, but not both.

Response: We agree that electric utility boilers should not be covered by the final CISWI rules because they are designed and operated for purposes of energy recovery and do not function as incinerators. We addressed this issue in the November 2000 CISWI comment response document (EPA–453/R–00–008). Electric utility boilers are regulated under authorities other than CAA section 129. Furthermore, the wording of CAA section 129(h) makes clear the Congressional intent for CAA regulations under CAA section 112 or section 129 to be mutually exclusive. In section 112(n)(1)(A), Congress set forth the limited circumstances under which EPA could regulate electric utility boilers under section 112. First Congress instructed EPA to complete a study of the hazards to public health reasonably expected to occur as a result of emissions by electric utility steam generating units of pollutants listed in section 112 after imposition of the requirements of the CAA. Then it required EPA to regulate electric utility steam generating units under section 112 if the Administrator finds such regulation is appropriate and necessary considering the results of the study required by section 112(n). EPA recently determined that it was neither appropriate nor necessary to regulate electric utility boilers under Section 112. (See 70 FR 15994, March 29, 2005.) The fact that the CAA specifically addressed electric utilities under section 112 indicates that Congress did not intend them to be regulated under section 129. Similarly, since promulgation of the final CISWI rules, EPA promulgated section 112 regulations for industrial, commercial and institutional boilers (40 CFR part 63, subpart DDDDD). That final rule applies to some electric steam generating units (*e.g.*, independent power producers). The language of CAA section 112(h) makes clear the Congressional intent for CAA regulation under section 129 or section 112 to be mutually exclusive. Accordingly, sources subject to section 112 standards are not CISWI units. We are making minor adjustments to the definition of ''commercial or industrial waste'' to clarify our intent that boilers operated for energy recovery are not subject to CISWI, even if such units combust, along with other fuels, a small amount of material that might, under some circumstances, be considered waste. The revised definition clarifies that the critical consideration in determining whether a unit is burning commercial or industrial waste is the function of the combustion unit, and the primary indicator of function is whether or not the unit is designed and operated to recover energy for a useful purpose.

The reference definition of energy recovery, which has not been changed, incorporates the concept of recovering thermal energy for ''useful purposes.'' The revised definition of ''commercial or industrial'' waste excludes from CISWI units (such as boilers) whose design provides for energy recovery and that are operated for energy recovery. However, units designed and operated without energy recovery remain subject to the CISWI rules. Thus, we believe the revised definition of ''commercial or industrial waste'' is sufficiently clear to exclude utility steam generating units from the CISWI rules.

Comment: One commenter strongly believes that a unit that incinerates solid waste at a rate of less than 1,000 pounds per hour (lb/hr) and recovers heat from the outside of the burn chamber of the unit for useful purposes should be exempt from the final CISWI rules. The commenter believes that such units are necessary in remote locations in northern climates for disposal of small volumes of solid waste and to generate heat as a useful resource.

Response: The commenter has not provided any specific data to support the technical or legal basis for a size cutoff. However, at this time, waste heat recovery units are not covered under CISWI because we have not assessed the impacts of including such units in the final CISWI rules. An impacts assessment is necessary, but is best done when we respond to the CISWI remand and can perform comprehensive analyses that address the addition of waste heat recovery units, any questions on the applicability of the CISWI rules that may be raised by promulgation of rules for the OSWI source category, and remand issues regarding determination of the MACT floor and emission limits. In a subsequent rulemaking action in response to the CISWI remand, we intend to propose additional regulatory language to address units with only waste heat recovery and assess the impacts of the inclusion of these units in the CISWI source category.

Comment: One commenter strongly supports EPA's approach of not specifying a particular level of British thermal units per pound (Btu/lb) as a regulatory threshold. The commenter also included a discussion of the 5,000 Btu/lb threshold that EPA had previously proposed in the CISWI rules, and pointed out that valid energy recovery could be obtained from materials with lower Btu values. The commenter indicated (in attached comments submitted in response to previous rulemakings) that valid energy

recovery from the cement kiln process has been obtained with materials with heating values between 996 and 1,948 Btu/lb, but recommended that, if EPA does adopt a Btu threshold, a threshold of 3,000 Btu/lb is appropriate and conservatively high.

Response: The EPA agrees that a Btu threshold is not needed for reasons described in the February 2004 notice and the 2000 CISWI promulgation preamble. In the preamble to the December 1, 2000 final CISWI rules (65 FR 75342), EPA summarized commenters' statements that "* * * the universe of materials burned for energy recovery is much broader than those defined as "fuels." For example, several of today's combustion technologies and some new emerging technologies can burn materials for energy recovery having heat values less than the proposed 5,000 Btu/lb threshold for considering a material a fuel." The EPA responded that "* * * we agree that several of today's combustion technologies, including some emerging technologies, may be capable of burning materials with a heat value of less than 5,000 Btu/lb to recover energy. Therefore, we have deleted the requirement from the definition of solid waste in the final NSPS and EG." We still maintain this position. In addition to the information submitted by the commenter stating that cement kilns can recover heat from materials in the 1,000 to 2,000 Btu/lb range, EPA found examples of fluidized bed combustion units and other technologies, used at pulp and paper mills and for other utility, industrial, or commercial uses, that recover useful energy from sludges and other materials with low Btu contents (*e.g.*, in the range of 1,000 to 3,800 Btu/lb). There is no bright-line Btu value that can be used to distinguish if a material is a fuel burned for energy recovery or a waste disposed of for purposes other than energy recovery. The approach taken in the February 2004 proposed definition is more workable than a Btu/lb cutoff.

B. Comments on the Definition of CISWI Unit

Comment: One commenter supports the definition of "CISWI unit," but suggested various clarifications to better express the intent of the definitions.

Response: Although we did not adopt any specific language provided by the commenter, we amended the definitions to remove redundant language and to better express our intent. For example, we are removing the following phrase from the definition of "commercial or industrial waste": "(including field erected, modular, and custom built incineration units operating with starved or excess air)." This language is already contained within the definition of "CISWI unit" and need not be included in the definition of the waste.

C. Comments on the Definition of Commercial or Industrial Waste

Comment: One commenter supports EPA's definition of "commercial or industrial waste." The commenter agrees that, considering high energy costs, materials burned for heat recovery should not be considered solid waste. The commenter also agrees that materials burned without heat recovery for a useful purpose should be regulated as commercial and industrial solid waste.

Response: We are promulgating the definition proposed in the February 17, 2004 **Federal Register** notice, with minor clarifications, and, as described elsewhere in this preamble, we are not including units with waste heat recovery in the final CISWI rules at this time.

Comment: One commenter agrees with the proposed definition of "commercial or industrial waste," but suggested some rewording for clarity.

Response: We agree with the commenter that there is room to improve the clarity of the proposed definition and have made some modifications to the definitions of "commercial or industrial waste" with this in mind. However, we have reorganized the proposed definition in a different manner than suggested by the commenter. We believe our modified definition is clearer than the reworded definition of commercial or industrial waste provided by the commenter. The commenter's definition does not reflect our decision to omit the phrase "combusted for reasons that do not include the recovery of heat for a useful purpose" and insert the phrase "whose design does not provide for energy recovery (as defined in this subpart)" to better reflect the key principal that we discussed in the preamble of the proposed rule. Furthermore, EPA's revised definition reflects our decision not to regulate units with only waste heat recovery at this time, but to propose to regulate such units when we respond to the remand of the final CISWI rules.

D. Comments on the Definition of Solid Waste

Comments: One commenter stated that EPA's arguments about the definition of solid waste are irrelevant and without merit. Pointing to section 129(g)(6) of the CAA, which provides that solid waste shall have the meanings established by EPA pursuant to the SWDA, the commenter argues that EPA has established only one "comprehensive definition" of solid waste under the SWDA: the definition in 40 CFR 261.2. (See 69 FR 7395/2.) Furthermore, the commenter asserts that this definition was the only comprehensive definition that existed when Congress enacted section 129, which, in the commenter's view, indicates that Congress intended EPA to use that definition. The commenter made this point in an attempt to refute EPA's argument that because section 261.2 "defines solid waste specifically for purposes of identifying hazardous solid waste [it] could not serve as a regulatory definition for purposes of identifying nonhazardous solid waste under CAA section 129." The commenter pointed out that EPA has not provided a reason that this definition is unusable for identifying nonhazardous solid waste, and the refusal to use the definition is arbitrary, capricious, and unlawful. Finally, the commenter added that even if EPA were not compelled to use the definition provided in 40 CFR 261.2, EPA's attempt to provide a new definition solely for the purpose of the CISWI regulation is unlawful because the CAA provides that "solid waste" shall have the meanings established by EPA "pursuant to the Solid Waste Disposal Act."

Response: We disagree with the commenter. Section 129(g)(6) of the CAA states that "solid waste * * * shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act." Section 129(g) also states that the term "solid waste incineration unit" does not include units required to have a permit under section 3005 of the SWDA. This reference to section 3005 of the SWDA refers to the hazardous waste regulatory program authorized under the SWDA. This language effectively limits the scope of EPA's authority under section 129 to units that burn nonhazardous solid waste.

However, the definition of "solid waste" in section 261.2 cited by the commenter applies only to hazardous wastes, whereas the final CISWI rules apply only to nonhazardous solid wastes. To develop and implement the hazardous waste regulatory program authorized by the SWDA, EPA adopted a definition of hazardous waste pursuant to the SWDA. This definition is found in 40 CFR part 261. In defining hazardous waste, 40 CFR part 261 also defines solid waste. In doing so, 40 CFR 261.1(b)(1) states that this definition of solid waste applies only to wastes that

are hazardous for purposes of implementing subtitle C of the Resource Conservation and Recovery Act (RCRA). Section 261.1(b)(2) indicates that the 40 CFR part 261 definition identifies only some of the wastes that are considered solid wastes under other sections of RCRA.

Much of the complexity and specificity of the 40 CFR part 261 definition was unique to hazardous waste and was needed to assure that hazardous waste is properly identified, tracked, transported, and disposed of, and is not inappropriately discarded or abandoned. One U.S. Appeals Court has recognized that the words of the RCRA statute contemplate that EPA refine and narrow the definition of solid waste for the sole purpose of Subchapter C of RCRA. *Connecticut Coast Fisherman's Ass'n* v. *Remington Arms Co.*, Inc., 989 F.2d 1305, 1315 (2d Cir. 1993). This court recognized that the RCRA statute contemplated more than one definition for the term ''solid waste.'' *Id.*

Consequently, we looked to the definition of solid waste in the SWDA and to other regulatory definitions of solid waste adopted by EPA under the authority of that statute that also apply to various types of nonhazardous solid wastes (*i.e.*, definitions found in 40 CFR part 240 through 40 CFR part 259). These definitions reflect the general definition of solid waste found in the SWDA (42 U.S.C. 6903), but they each vary slightly depending on the particular regulatory circumstances. Furthermore, these solid waste definitions found in the rules for nonhazardous solid wastes do not contain the extensive detail found in the definition of solid waste in the 40 CFR part 261 hazardous waste rules.

The fact that the language of the individual regulatory definitions of solid waste vary from definition to definition indicates that the Administrator has not adopted a single authoritative definition to identify nonhazardous solid waste under the SWDA. Because the Administrator has not adopted a single authoritative definition of nonhazardous solid waste, it is reasonable for EPA to adopt an appropriate definition for purposes of the final CISWI rules so long as it is not inconsistent with the SWDA. As described in previous **Federal Register** actions pertaining to the final CISWI rules (64 FR 67104, November 30, 1999 and 65 FR 75342, December 1, 2000) EPA has adopted, under the joint authority of the CAA and RCRA, a definition of solid waste that is used solely to identify nonhazardous solid waste for the regulatory programs authorized by CAA section 129, such as the final CISWI rules. The definition proposed in the February 2004 CISWI notice is the same as the definition previously adopted for the final CISWI rules, and we consider the definition of solid waste in the final rules to be consistent with the SWDA.

Comment: Several commenters support the proposed definition of ''solid waste,'' which is the same as that already contained in 40 CFR 60.2265. One of these commenters stated that, to implement this (CISWI) rule, EPA should continue to use definitions designed to address the particular regulatory problems that it poses in the context of the CAA as a whole, rather than being bound by definitions under RCRA that were designed to serve completely different purposes. The commenters stated that, since EPA has never established a single, all-purpose definition of solid waste under RCRA, EPA was authorized to establish a definition of ''solid waste'' to implement CISWI, as long as that definition was consistent with RCRA. The commenter added that EPA's definition of ''commercial or industrial waste'' under CISWI is fully consistent with RCRA. The statute, § 1004(27), defines solid waste as discarded material. Since materials from which useful energy or raw materials are recovered are not discarded, the final CISWI rule definition fully implements the statute. The commenter added that units excluded from CISWI were not excluded from regulation under the CAA, but would instead be subject to similar standards under CAA section 112. The fact that units will be regulated should broaden EPA's discretion. The commenter supports the major aspects of the proposal.

Response: We agree that the proposed definition of solid waste is appropriate for the reasons set forth in our prior response. We agree that EPA has never established a single, all-purpose definition of solid waste under RCRA and that we have the authority to establish a definition of solid waste for purposes of the CISWI rules.

E. Comments on the Rulemaking Process

Comment: One commenter challenged the rulemaking process, arguing that EPA committed to convene further proceedings to allow for additional public comment on the CISWI definitions, but then finalized the boiler NESHAP under CAA section 112. In the commenter's view, this series of events rendered the reconsideration proceeding on the CISWI definitions meaningless since EPA had already decided which units would be covered under the final boiler NESHAP.

Response: In order to comply with a deadline established in a Consent Decree (which was negotiated and signed by counsel for the commenter), EPA was required to finalize the boilers NESHAP under CAA section 112 by February 27, 2004. As a result of this deadline, EPA did not have the ability to wait to finalize the boiler NESHAP until the conclusion of EPA's reconsideration of the CISWI definitions. The notice of proposed rulemaking on the CISWI definitions was signed by the Assistant Administrator for Air and Radiation on February 10, 2004 and published in the **Federal Register** on February 17, 2004. The Administrator signed the final boiler NESHAP on February 26, 2004, and EPA published the final rule in the **Federal Register** on September 14, 2004 after an unforeseen delay.

Because these actions occurred contemporaneously, we acknowledged in the Response to Comments document for the final boiler NESHAP that we were soliciting further comment on the CISWI definitions. See ''Response to Public Comments on Proposed Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP'' (Boilers RTC). In that document, we stated that ''[c]hanges made to the CISWI rule in the promulgated rule that affect boilers and process heaters will be dealt with after the promulgation of the boiler MACT standards.'' (See Boilers RTC at 167.) Thus, we informed the public that we would take further action to address the scope of the boilers NESHAP if it was necessary after our reconsideration of the CISWI definitions.

Our final action in the boilers NESHAP on February 26, 2004 was informed by the definitions that we had proposed on February 17, 2004 in the CISWI reconsideration action. Thus, at that time, we had intended for the scope of the final boilers NESHAP to be consistent with the proposed scope of the final CISWI rules. Our rationale for the action in the final boilers NESHAP was based on what EPA proposed in the reconsideration action on the CISWI definitions. However, as shown by the statements described above, we continued to recognize that it might be necessary to make changes to the CISWI definitions and final boilers NESHAP based on public comments received on this reconsideration. We made clear that our final action in the boilers NESHAP did not preclude the possibility of further action to amend the scope of the boilers NESHAP after receiving public

comments on the scope of the CISWI definitions.

VI. Relationship to NESHAP for Boilers and Process Heaters

Based on our conclusions in this reconsideration action for CISWI, we do not believe it is necessary to take any action to amend our NESHAP for Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR part 63, subpart DDDDD). The definitions in the Boilers and Process Heaters NESHAP that define the scope of the source category are consistent with our definitions for the CISWI source category. In 40 CFR part 63, subpart DDDDD, we define a boiler as ''an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water.'' (See 40 CFR 63.7575.) In addition, we define a process heater as ''an enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, solid) or to heat transfer material for use in a process unit, instead of generating steam.'' (See 40 CFR 63.7575.) The NESHAP apply to industrial, commercial, or institutional boilers and process heaters. (See 40 CFR 63.7485.)

VII. Impacts of the Final Rules

Today's final amendments to the definitions do not change the scope of the CISWI rules or the requirements of the rules. The amendments to the definitions are meant to clarify the intent of the definitions that were finalized as part of the December 1, 2000 final CISWI rules. Therefore, today's action does not change the economic, environmental, or other impacts of the existing CISWI rules.

The definitions as proposed in the February 17, 2004 notice would have changed the scope of the rules to include units with only waste heat recovery. While we currently intend to propose to cover these units under CISWI in the future when we conduct additional rulemaking proceedings in response to the remand, we have not performed analyses of the environmental and economic impacts associated with covering these sources under CISWI. Therefore, we are not taking final action concerning these units at this time. During the development of our response to the CISWI remand, we intend to analyze the environmental, cost, and economic impacts of requiring waste heat recovery units to comply with emission limits and other CISWI requirements, and to propose broadening the scope of the final CISWI rules to cover these sources. We will provide notice and opportunity to comment on the estimated impacts, including impacts on small entities, in our proposed response to the remand.

VIII. Future Actions on the Final CISWI Rules

The final amendments to the definitions announced in this action will take effect immediately. As explained above, in our action on remand, we intend to propose additional changes that would cover units with only waste heat recovery in the CISWI source category, as discussed earlier. In addition, the remand action will also address such issues as the MACT floor determination, emission limits, and other questions on the applicability of the December 2000 CISWI rules and the interface with the rules for OSWI units. To properly address these issues, we will need to perform additional analyses to determine the changes that will occur to the CISWI rules and the associated impacts of these changes. To completely assess the impacts, these analyses are best performed when we are addressing all of the issues involved with the CISWI remand including, among other things, potential changes to the number of regulated units (*e.g.*, by the addition of units with only waste heat recovery) and the control techniques used in the newly expanded CISWI source category. Therefore, when we propose our response to the remand, we will take public comments on any proposed changes and their associated impacts, and then promulgate final rules.

IX. Statutory and Executive Order Reviews

The statutory and executive order reviews described in this section reflect the fact that the final definitions contained in the CISWI rule amendments do not change the scope of the rules or the requirements of the rules. The amendments are meant to clarify the intent of the definitions that were finalized as part of the December 1, 2000, CISWI rules. In the future, we will propose any additional changes to the CISWI rules that we determine are necessary to respond to the remand. At that time, EPA will consider the combined effects of all of the regulatory changes that we will propose as part of the CISWI remand.

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to review by OMB and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this action does not constitute a ''significant regulatory action'' because it does not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 60 CFR part CCCC and 60 CFR part DDDD under the provisions of the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq. Information Collection Request (ICR) documents were previously prepared for the CISWI NSPS and the CISWI EG when they were promulgated in 2000. Both ICRs were approved by OMB and assigned OMB control numbers (OMB 2060–0450/ICR No. 1926.02 for subpart CCCC of 40 CFR part 60 and OMB 2060–0451/ICR No. 1927.02 for subpart DDDD of 40 CFR part 60). A copy of the ICR documents may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The final definitions contained in the amendments to the final CISWI rules do not impact the burden estimates previously made because the definitions do not change the scope of the CISWI

rules or the requirements of the CISWI rules. Consequently, the ICRs have not been revised.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule amendments.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as follows:

(1) A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than $6.5 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's size standards;

(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; or

(3) A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the amendments to the final CISWI rules on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The EPA previously determined that the final CISWI rules will not have a significant economic impact on a substantial number of small entities (65 FR 75348, December 1, 2000), and, therefore, determined that it was not necessary to prepare a regulatory flexibility analysis in connection with the December 1, 2000 final rules. The revised definitions contained in the final amendments to the CISWI rules do not change the scope or stringency of the CISWI rules or cause additional units to become subject to the rules. Therefore, the previous conclusion that the CISWI rules will not have a significant impact on a substantial number of small entities remains valid.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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 by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if EPA 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, EPA must develop a small government agency plan under section 203 of the UMRA. 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA previously determined that the final CISWI rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year (65 FR 75348, December 1, 2000). Thus, the CISWI rules are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA previously determined that the final CISWI rules contained no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulations do not unfairly apply to small governments. Therefore, the CISWI rules were not subject to the requirements of section 203 of the UMRA. The revised definitions contained in the final amendments to the CISWI rules do not change the scope or stringency of the CISWI rules, and therefore, do not change our previous determinations. Therefore, we have determined that the amendments to the CISWI rules are not subject to the requirements of sections 202, 203, or 205 of UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, EPA may not issue a regulation that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Also, EPA may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

The final CISWI rules, including the revised definitions contained in these amendments, do not have federalism implications. The final rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in

Executive Order 13132. The final rules will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to the final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final CISWI rules, including the revised definitions contained in these amendments, do not have Tribal implications, as specified in Executive Order 13175. The rules 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 the final rule amendments.

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

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rules, including these amendments to the definitions, are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

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

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

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement 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, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The EPA previously completed an NTTAA analysis for the final CISWI rules (65 FR 75349, December 1, 2000). The revised definitions contained in the amendments to the final CISWI rules do not involve any technical standards; thus, the requirements of section 12(d) of the NTTAA do not apply to these amendments.

J. Congressional Review Act

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

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and Procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 14, 2005.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart CCCC—[AMENDED]

■ 2. Section 60.2265 is amended by:
■ a. Removing the definition of ''commercial and industrial waste'';
■ b. Adding the definition of ''commercial or industrial waste'' in alphabetical order; and
■ c. Revising the definitions of ''commercial and industrial solid waste incineration (CISWI) unit'' and ''solid waste'' to read as follows:

§ 60.2265 What definitions must I know?

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion

chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in § 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

Commercial or industrial waste means solid waste (as defined in this subpart) that is combusted at any commercial or industrial facility using controlled flame combustion in an enclosed, distinct operating unit: Whose design does not provide for energy recovery (as defined in this subpart); or operated without energy recovery (as defined in this subpart). Commercial or industrial waste also means solid waste (as defined in this subpart) combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

* * * * *

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

* * * * *

Subpart DDDD—[AMENDED]

■ 3. Section 60.2875 is amended by:
■ a. Removing the definition of ''commercial and industrial waste'';
■ b. Adding the definition of ''commercial or industrial waste'' in alphabetical order; and
■ c. Revising the definitions of ''commercial and industrial solid waste incineration (CISWI) unit'' and ''solid waste'' to read as follows:

§ 60.2875 What definitions must I know?

* * * * *

Commercial and industrial solid waste incineration (CISWI) unit means any combustion unit that combusts commercial or industrial waste (as defined in this subpart), that is a distinct operating unit of any commercial or industrial facility (including field erected, modular, and custom built incineration units operating with starved or excess air), and any air curtain incinerator that is a distinct operating unit of any commercial or industrial facility that does not comply with the opacity limits under this subpart applicable to air curtain incinerators burning commercial or industrial waste. While not all CISWI units will include all of the following components, a CISWI unit includes, but is not limited to, the commercial or industrial solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial or industrial waste hopper (if applicable) and extends through two areas: The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and the combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The CISWI unit includes all ash handling systems connected to the bottom ash handling system. A CISWI unit does not include any of the fifteen types of units described in § 60.2555 of this subpart, nor does it include any combustion turbine or reciprocating internal combustion engine.

Commercial or industrial waste means solid waste (as defined in this subpart) that is combusted at any commercial or industrial facility using controlled flame combustion in an enclosed, distinct operating unit: Whose design does not provide for energy recovery (as defined in this subpart); or operated without energy recovery (as defined in this subpart). Commercial or industrial waste also means solid waste (as defined in this subpart) combusted in an air curtain incinerator that is a distinct operating unit of any commercial or industrial facility.

* * * * *

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

* * * * *

[FR Doc. 05–18825 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD–2004–18489]

RIN 2133–AB62

Maritime Security Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule revises and adopts as final the interim final rule published in the **Federal Register** on July 20, 2004. The Maritime Administration (MARAD) is issuing this final rule to implement provisions of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003). The MSA 2003 authorizes the creation of a new Maritime Security Program (MSP) that establishes a fleet of active, commercially viable, privately owned vessels to meet national defense and other security requirements and to maintain a United States presence in international commercial shipping.

DATES: Effective Date: This final rule is effective November 21, 2005.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Maritime Administration, Telephone 202–366–2323. For legal questions, call Murray Bloom, Chief, Division of Maritime Programs, Maritime Administration, 202–366–5320.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1996, the President signed the Maritime Security Act of 1996 establishing the Maritime Security Program (MSP) for FYs 1996 through 2005 to provide financial assistance of up to $2.1 million per vessel per year to operators of U.S.-flag vessels with approved MSP Operating Agreements. The MSP is funded at $98.7 million per year for each year from FY 1996 through

FY 2005, which covers a maximum of 47 vessels.

On November 24, 2003, the President signed the National Defense Authorization Act for Fiscal Year 2004, which contained the MSA 2003 creating a new MSP for FY 2006 through FY 2015. This program also provides financial assistance to operators of U.S.-flag vessels that meet certain qualifications. The MSA 2003 requires that the Secretary of Transportation, in consultation with the Secretary of Defense, establish a fleet of active, commercially viable, militarily useful, privately-owned vessels to meet national defense and other security requirements. Section 53111 of the MSA 2003 authorizes $156 million annually for FYs 2006, 2007, and 2008; $174 million annually for FYs 2009, 2010, and 2011; and $186 million annually for FYs 2012, 2013, 2014, and 2015 to support the operation of up to 60 U.S.-flag vessels in the foreign commerce of the United States. Payments to participating operators are specified in the statute at $2.6 million per ship per year for FYs 2006 through 2008, $2.9 million per ship per year for FYs 2009 through 2011, and $3.1 million per ship per year for FYs 2012 through 2015. Payments are subject to annual appropriations. Participating operators are required to enter into an Emergency Preparedness Agreement, which would make their commercial transportation resources available upon request by the Secretary of Defense during times of war or national emergency.

Subtitle A, section 3517 of the MSA 2003 provides for a pilot program under which the Secretary of Transportation may enter into an agreement(s) to reimburse MSP vessel operators up to 80 percent of the cost of performing maintenance and repairs in U.S. shipyards versus the cost of performing this work in a geographic region in which the MSP vessel generally operates. Funding to perform qualified maintenance and repair work in the United States on MSP vessels is authorized to be appropriated in the amount of $19.5 million for each of fiscal years 2006 through 2011.

Interim Final Rule

As authorized by section 53103(b)(1) of the MSA 2003, MARAD issued an interim final rule on July 20, 2004 (69 FR 43328), which added a new part 296 to title 46 of the Code of Federal Regulations. The interim final rule established procedures to implement the MSA 2003 with respect to the application for, and award of, MSP Operating Agreements that provide financial assistance to owners and/or operators of the vessels enrolled in the program. The program will be administered on the basis of one-year renewable MSP Operating Agreements, provided funding is available in subsequent years. Participating operators will receive financial assistance when operating eligible vessels in the foreign commerce of the United States, and certain specified foreign and domestic areas, with a minimum of operating restrictions, for at least 320 days in any fiscal year. Payment under the program will be made on a prorated basis for vessels operated less than 320 days in any year, exclusive of days a MSP vessel is being drydocked, surveyed, or repaired. In addition, no payment will be made for each day any vessel carries civilian bulk preference cargoes of 7,500 tons or more. MARAD's interim final rule solicited applications for participation in the MSP using the application approved under OMB Control No. 2133–0525. MARAD received applications from 26 applicants for 142 applicant vessels; MSP Operating Agreements for 60 vessels were awarded on January 12, 2005.

Discussion of Comments and Changes

MARAD received fifteen sets of comments on the interim final rule. MARAD also received comments that were not related to the interim final rule, which will not be addressed in this document. Comments on the interim final rule, MARAD's responses, and changes made to the interim rule, are as follows.

1. Definitions; Section 296.2

Definition of Citizen of the United States

Comment: One commenter approves of the definition of ''Section 2 Citizen'' but urges that the definition of ''Section 2 Citizen'' be used in sections 296.20, 296.22, 296.30(f)(2)(ii)A&B, 296.31(d)(3), and 296.41(c)(ii) instead of ''citizens of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802).'' The commenter urges that the term ''Citizen of the United States'' not be used because it is duplicative, unnecessary, and confusing.

Response: MARAD agrees to substitute ''Section 2 Citizen'' for ''citizens of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802)''. In the sections referred to by the commenter, the term ''Citizen of the United States'' will be deleted from the regulation.

Comment: One commenter argued that the last phrase of the definition of ''Citizen of the United States''—''or a corporation, partnership, or association as determined under section 2 of the Shipping Act, 1916, as amended (46 App U.S.C. 802)''—is too restrictive as it defines U.S. citizenship and is not in agreement with section 12102 of title 46, United States Code. The commenter stated that the definition of ''Citizen of the United States'' should also include documentation citizens.

Response: The commenter's suggestion is rejected because the documentation statutes, 46 U.S.C. 12101, *et seq.*, do not contain a definition for ''Citizen of the United States''.

Definition of Domestic Trade

Comment: One commenter seeks to have the term ''domestic trade'' conform with terminology used elsewhere in the rule—''coastwise trade''.

Response: The terms ''domestic trade'' and ''coastwise trade'' are used in two contexts in the statute. First, MSP operators may not participate in noncontiguous domestic trade unless they are Section 2 Citizens. Second, MSP vessels may be operated in mixed foreign commerce and domestic trade allowed under a registry endorsement; however, the MSP vessel cannot otherwise be operated in ''coastwise trade''. The use of both terms in the regulation is consistent with the statute. The statute apparently uses both terms ''coastwise trade'' and ''domestic trade'' interchangeably to mean trade between points in the United States. The definition section will reflect both definitions, which have been clarified by removing ''two or more ports and/or'' as being redundant with the term ''points''.

Definition of Fleet

Fleet has been removed as the definition of ''Fleet'' was redundant to the definition of MSP Fleet.

Definition of Foreign Commerce

Comment: The definition of ''foreign commerce'' is divided into two paragraphs ''the first paragraph concerns vessels other than liquid or dry bulk carriers; the second paragraph concerns liquid and dry bulk carrying services. Three parties commented on the first paragraph. One commenter stated that the term ''cargo'' in line ten of the definition is ambiguous because it could be interpreted that only cargo originating in or destined for the United States could be carried by a covered vessel. The commenter urged that the definition be clarified by adding the word ''any'' in front of cargo, enabling a single unit of cargo with origination in or destination to the United States to

qualify the vessel/voyage. Two other commenters stated that 46 U.S.C. 53101(4)(A)(ii) clearly permits ''commerce or trade between foreign countries'' without restriction. Both commenters urged that the definition be changed to reflect the statute's language.

Response: MARAD agrees to add the word ''any'' regarding origination or destination to the United States to qualify the vessel/voyage and will revise the definition of foreign commerce accordingly. MARAD does not agree that the definition of foreign commerce for MSP liner cargo is intended to be between foreign countries if no cargo originates in or is destined for the United States.

Comment: Two parties commented on the second paragraph. Both commenters stated that the definition of ''foreign commerce'' as written precludes the carriage of cargo between the United States and a foreign port.

Response: MARAD agrees that the second paragraph could be interpreted as precluding carriage of cargo between United States ports and foreign ports and needs clarification. We have added a phrase that specifically permits trading between United States ports and foreign ports.

Definition of Militarily Useful

Comment: One commenter stated that the definition of ''militarily useful'' may limit the discretion of the Secretary of Defense by binding him to ''minimum military capabilities, according to the Department of Defense (DOD) Joint Strategic Planning Capabilities Plan (JSCAP) guidance.'' The commenter ''suggests that the definition of ''militarily useful'' be revised to confirm DOD's unfettered authority'' over the vessel selection process.

Response: The standards for ''militarily useful'' are DOD standards. MARAD does not agree that the definition limits the discretion of the Secretary of Defense during the selection of vessels for the MSP.

Definition of MSA 2003

MARAD has added a definition for ''MSA 2003''.

Definition of MSP Operating Agreement

MARAD has clarified the term MSP Operating Agreement by defining it as an assistance agreement as opposed to a procurement.

Definition of Noncontiguous Domestic Trade

Comment: One commenter seeks to include the phrase ''including transportation under the Third Proviso to Section 27 of the Merchant Marine Act of 1920 (the Jones Act) (46 App. U.S.C. 883)'' at the end of the definition of ''noncontiguous domestic trade''.

Response: The Third Proviso provides an exception to the prohibition in the Jones Act on the use of non-coastwise vessels for carriage of cargo between points within the continental United States, including Alaska, provided part of the transportation is over Canadian rail lines. However, 46 U.S.C. 53107, specifically prohibits participation by an MSP operator in transportation between ''a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.'' The question is whether the current definition is sufficient on the prohibition of carriage of cargo in the noncontiguous domestic trades under MSP, even if allowed under the Third Proviso to section 27. In our view, the definition is specific, and the only exception to the MSP prohibition is spelled out ''other than a point in Alaska north of the Arctic Circle''.

Definition of Operator

Comment: MARAD received two comments that ownership alone does not necessarily qualify an owner as an operator.

Response: MARAD agrees and has added the phrase ''and operates that vessel directly'' immediately after the words ''owns a vessel'' in the text.

Definition of Person

Comment: MARAD received two comments that the concluding sentence ''A trust is not a person'' causes unintended consequences particularly with respect to ownership of enrolled vessels.

Response: The purpose of this determination is that MARAD did not want to grant an MSP Operating Agreement to a trust, because we believe that an MSP Operating Agreement should be awarded to an entity that can actively manage a vessel in its own right. Accordingly, a corporation, limited liability company, partnership, or individual are all acceptable contractors. However, a trust cannot act in its own right and should not be eligible. Therefore, we are changing the concluding sentence to ''For purposes of holding an MSP Operating Agreement, the term ''person'' excludes a trust.'' MARAD is adding to the definitions of Applicant and Contractor that ''the term, applicant excludes a trust'' and ''the term, contractor excludes a trust'', respectively.

Definition of Section 2 Citizen

Comment: One commenter does not understand or agree with the phrase ''without regard to any statute that ''deems'' a vessel to be owned and operated by a Section 2 Citizen'', and urges clarification as to the purpose of this phrase.

Response: MARAD used the ''deeming'' phrase to account for the possibility of future changes to the ''deeming'' law. The ''deeming statute'' is cited in 46 U.S.C. 12102(d)(4), as amended, and does not currently apply to chapter 531 of title 46.

Definition of Transfer of an Operating Agreement

Comment: Two commenters objected to the definition of ''transfer of an operating agreement''. Both commenters wanted the phrase ''either directly or indirectly'' removed and both did not want the definition to reflect inter-company transfers that, under the existing MSP, do not require an amendment to the MSP Operating Agreement. Both commenters proposed revised language and one offered an additional definition.

Response: We do not feel that it is unreasonable to require contractors to report all proposed transfers. A transfer of an MSP Operating Agreement could be accomplished indirectly, if the MSP Operator is acquired by another entity. In such events, MARAD and DOD have a responsibility under the statute to review the transfer. Thus, MARAD declines to revise this definition.

Definition of United States Citizen Trust

Comment: One commenter states that section 53102 of the MSA 2003 requires only that each trustee be a ''citizen of the United States'' for a trust to qualify, not a Section 2 Citizen, as specified in the definition. The commenter requests that MARAD's definition conform to the law.

Response: MARAD believes that the intent of the statute is that each trustee be a Section 2 Citizen. Further, not requiring each trustee to be a Section 2 Citizen defeats the purpose of having a United States Citizen Trust. Therefore, no change will be made to this definition.

2. Applications; Section 296.3

Comment: One commenter notes that the term ''contractor'' in section 296.3(a) should be replaced by ''applicant''.

Response: MARAD agrees and has amended section 296.3(a) accordingly. The sentence including this change has been moved to a new section 296.24.

Comment: One commenter states that MARAD should make clear what sort of

substantiating information is required to establish either ownership or the status of a demise charter for the application to be considered ''complete''.

Response: MARAD is adding to section 296.3(a) the sentence ''Contractors of MSP Operating Agreements are required to submit ownership information such as a vessel title of ownership and signed charters to MARAD for approval by July 1, 2005.''

Comment: One commenter objected to the qualifier ''U.S.'' before citizenship as it applies to vessel managers in paragraph (b)(1).

Response: MARAD is requiring that vessel managers meet the same standards of citizenship as the applicant for whom they provide service. We have modified the language to clarify that vessel managers for Section 2 Citizen applicant operators must meet Section 2 Citizenship standards, and vessel managers for documentation citizens must meet citizenship standards for documentation citizens.

Comment: One commenter believes that the use of the word ''demonstrates'' with regard to submitting an affidavit of U.S. citizenship to qualify as being able to document a vessel under 46 U.S.C. chapter 121, needs to be changed to ''declare'' or ''affirm''.

Response: MARAD does not believe that a change to the definition is necessary as an affidavit is an affirmation.

Comment: One commenter requested changing ''your'' to ''any'' in section 296.3(b)(12) in reference to supplying special security agreements with the MSP application.

Response: MARAD agrees and has changed ''your'' to ''any'' in section 296.3(b)(12).

Comment: One commenter states that the text of section 296.3(b)(13) limits the scope of the certification from a documentation citizen who is a demise charterer of the MSP vessel to only ''the foreign country of the parent'' of any documentation citizen required to so certify, whereas the form of the declaration states the scope as ''laws of the foreign country(ies) of the [Applicant's] ultimate foreign parent or intermediate parents''. * * *

Response: MARAD agrees and has changed the text of section 296.3(b)(13) to agree with the declaration.

Comment: One commenter argues that section 296.3(b)(15) regarding replacement vessel plans and age waivers is inconsistent with the MSP application form and that the application form should prevail. The commenter notes that item 17 of the MSP application form requires that an applicant for a Participating Fleet Vessel that is over 15 years of age include detailed information on its intended replacement vessel and item 18 requires an applicant for an age waiver to provide statutory information to support an age waiver. The commenter believes that section 296.3(b)(15) appears to require applicants to provide details of their replacement plan, which is premature.

Response: MARAD agrees and has added language regarding the replacement plan to section 296.3(b)(15) that is consistent with the MSP application form.

3. Citizenship Requirements of Owners, Charterers and Operators; Section 296.10

Comment: One commenter suggests that in order to ensure proper interpretation of MSA 2003 requirements, ''entire'' should be added to section 296.10 to ensure that citizenship requirements apply throughout the term of an MSP Operating Agreement.

Response: MARAD agrees and has amended the regulation to read ''Citizenship requirements are deemed to have been met if during the entire period of an MSP Operating Agreement under this chapter''. * * *

Comment: One commenter requests that the word ''person'' should be replaced by ''non-Section 2 Citizen'' so that foreign certification and other documentation requirements would apply to only documentation citizens.

Response: MARAD agrees and has amended the regulation to read ''A vessel to be included in an MSP Operating Agreement is owned by a person that is a Section 2 Citizen or a United States Citizen Trust, and the vessel is demise chartered to a non-Section 2 Citizen''.

Comment: One commenter states that MARAD does not cover the procedures it will follow as to the approval of board and executive personnel at the time of application in section 296.10(b)(2).

Response: MARAD does not believe that establishing specific procedures for approval of board and executive personnel is necessary. MARAD believes that maintaining flexibility to consider all factors during the evaluation of applications and considering unforeseen events does not require establishment of specific procedures.

Comment: One commenter objects to requiring a majority of the members of the board of directors of a Documentation Citizen charterer being Section 2 Citizens and recommends that ''section 2'' be deleted and ''of the United States'' be inserted after ''citizens.''

Response: MARAD's language in section 296.10 conforms to 46 U.S.C. 53102(c)(2)(A)(ii)(II) of the MSA 2003. Thus, no revision is necessary.

Comment: One commenter requested that MARAD revise the introductory text of section 296.10(c) by adding the phrase ''and operated'' to indicate that a vessel to be included in an MSP Operating Agreement must be owned and operated by defense contractors as set forth in paragraph (c). The commenter also suggested that MARAD modify the phrase ''owned and operated by a defense contractor'' by adding ''or a related person to include affiliated or related companies within the same corporate group'' as the commenter believes the phrase ''who is a person'' is too restrictive.

Response: MARAD agrees and has added these changes to the section 296.10.

4. Vessel Requirements; Section 296.11

Comment: One commenter notes that section 296.11(a)(5) should modify section 296.11(a)(4)(ii).

Response: MARAD agrees and has renumbered section 296.11(a)(5) to section 296.11(a)(4)(ii)(A) and renumbered sections 296.11(a)(5)(i) through 296.11(a)(5)(iii) to sections 296.11(a)(4)(ii)(A)(1) through 296.11(a)(4)(ii)(A)(3), respectively.

Comment: One commenter argues that the reflagging-in requirement as stipulated in section 296.11(a)(4) (which includes the former section 296.11(a)(5)) implies that the vessel standard exception is a threshold for vessel participation in the MSP, rather than an exception from U.S. Coast Guard standards that apply to every other U.S.-flag vessel. The commenter requests that this section be moved to another subsection and clarified to state that a vessel enrolled in the MSP that satisfies the statutory requirements will receive a valid Certificate of Inspection from the U.S. Coast Guard for all purposes.

Response: MARAD believes that section 296.11(a)(4) states clearly that in order to be eligible for an MSP Operating Agreement, a foreign flag vessel must meet the Coast Guard standards noted in section 296.11(a)(4)(ii)(A). Whether or not a vessel meets the standards noted in section 296.11(a)(4)(ii)(A) can only be addressed by the U.S. Coast Guard.

Comment: One commenter noted that MARAD did not address regulatory relief provided in 46 U.S.C. 53108(c), as enacted in the MSA 2003, regarding telecommunications and other electronic equipment on a foreign vessel

that will be documented under the U.S. flag for operation in the MSP. The commenter suggested that MARAD incorporate the Federal Communications Commission (FCC) regulatory relief provisions into section 296.11(a)(5).

Response: MARAD agrees, and is adding the FCC provision under section 296.11(c).

5. Tank Vessels; Section 296.20

Comment: One commenter stated that, because of uncertainty of funding for the National Defense Tank Vessel Construction Assistance Program (NDTVCP), the application process for tankers in the MSP should be phased in. The commenter stated the difficulty of providing specific existing vessel information when the uncertainty of funding makes it impossible to know how long the existing vessels need to be contracted for, or even whether NDTVCP funding will eventually occur. The commenter urges MARAD to allow NDTVCP applicants to provide generic information on October 15, regarding vessels for temporary slots, and to fill in the specific data later.

Response: MARAD is keenly aware of the dilemma presented to NDTVCP tanker applicants. However, MARAD was required to offer MSP Operating Agreements to operators on January 12, 2005. Those MSP Operating Agreements will, by necessity, include temporary vessel slots for existing tankers or other vessels to temporarily occupy the slots of NDTVCP tankers well in advance of MARAD knowing that tanker construction money will be available. Funding availability will determine when NDTVCP permanent slots are awarded.

Comment: One commenter noted that section 296.20(e) specifies that if a tank vessel contractor does not offer an eligible existing tank vessel during construction of the tank newbuilding, then the Secretary may award an MSP Operating Agreement to a non-tank vessel of another contractor until construction of the new tank vessel is completed in the United States. The commenter suggests that another alternative would be to temporarily award an MSP Operating Agreement to a different contractor with an eligible tank vessel.

Response: MARAD will amend the language to change ''non-tank vessel'' to ''any eligible vessel''. In addition, MARAD is adding to the end of this section further clarification to this section in accordance with MARAD's determination of January 12, 2005 specifying that a Contractor awarded MSP Operating Agreements for three existing tank vessels must sign and execute a binding agreement for construction in the United States of three replacement tank vessels to be operated under MSP Operating Agreements not later than nine months after construction and MSP operating assistance funding for three tank vessels becomes available.

Section 296.20(b)(1) has been amended for clarity, including that the requirement for a Contractor to enter into a binding agreement only occurs after both construction and operating assistance are available. Sections (b)(2)(i) and (b)(2)(ii) have been rewritten to reflect MSP Operating Agreement language that was not available when the Interim Final Rule was published.

6. Participating Fleet Vessels; Section 296.21

Comment: One commenter suggests revising the last sentence in section 296.21(d)(1) by inserting after ''Applicants must certify that they will have the requisite authority'' the phrase ''as of October 1, 2005 and for the full period of the Operating Agreement thereafter'' and adding ''that remains in effect beyond September 30, 2015'' to the end of the sentence.

Response: MARAD agrees that this language adds clarity but has changed ''beyond'' to ''until'' after ''that remain in effect'.

Comment: One commenter suggests that requesting applicants to name a replacement vessel with their applications as noted in section 296.21(d)(2) is unreasonable and that a ''replacement plan'' is what should be approved by MARAD.

Response: In conjunction with comments on section 296.31, MARAD has decided to change its requirements. For companies requesting age waivers, MARAD will require Applicants to submit a replacement vessel plan at least 120 days before the expiration of age eligibility for the MSP vessel.

Comment: One commenter believes that section 296.21(d)(2) is misplaced because it refers to all vessels subject to an age waiver, not just Participating Fleet Vessels. The commenter further believes that MARAD should clarify that the decision to extend an MSP Operating Agreement beyond the date that the vessel becomes 25 years of age will be made during the term of the MSP Operating Agreement when an appropriate vessel can be offered instead of during the application process.

Response: Section 296.21(d)(2) refers to the need of the applicant to provide replacement plans for vessels in section 296.21(d)(1) that become over age. This section relates only to Priority II vessels, so no change to this section is required. The statute does not give authority to allow a vessel over 25 years of age in the program unless it is a Priority II vessel, and only during the first 30 months of the program.

Comment: One commenter suggested that DOD has the right to reject a Participating Fleet Vessel if it is no longer deemed militarily useful. The commenter states that DOD has authority to specify operational requirements to determine the order of priority within a category of priority and the authority to approve or not approve the award of an MSP Operating Agreement within a priority. The commenter believes that MARAD's reference in section 296.30(a)(2) to the Commander establishing general evaluation criteria for operational requirements * * * for vessels eligible under the third and fourth priorities is incorrect, and should also be applied to the second priority.

Response: MARAD does not agree as a determination was made by the U.S. Transportation Command (USTRANSCOM) prior to acceptance of applications that all the Participating Fleet Vessels in Priority II have already been deemed to be militarily useful, and therefore, the Commander's general evaluation criteria will be restricted to Priority III and Priority IV applicants. While some Priority III and Priority IV vessels having greater military usefulness than some Priority II vessels may be rejected, MARAD and the Commander intend to honor the ''grandfather'' rights of the Participating Fleet Vessels, pursuant to 46 U.S.C. 53103(a)(1)(B). No change needs to be made to the regulation.

Comment: One commenter expressed concern over the possibility that a Participating Fleet Vessel may not be available to participate in the MSP on October 1, 2005 due to an unforeseen casualty to the vessel, and suggested that the Contractor be allowed to offer an eligible replacement vessel with a 60 day (or other agreed upon) period to preserve the MSP slot.

Response: MARAD agrees to add a new paragraph (f) to section 296.21 to address this concern. Section 296.21(f) will read ''In the event that a Participating Fleet Vessel will be unavailable to participate in the MSP on October 1, 2005, due to an unforeseen casualty to the vessel, a Contractor may offer an eligible replacement vessel. The replacement vessel must subsequently be approved by MARAD and DOD. The replacement vessel must operate under an MSP Operating Agreement in

sufficient time to meet the 180 minimum operation days required during the fiscal year to avoid being in default of the MSP Operating Agreement.''

7. Discretion Within Priority; New Section 296.23

Comment: Several commenters stated that Discretion Within Priority applied to all priorities and placing it in section 296.22, which only references Priority III and Priority IV vessels, implies that Discretion Within Priority applies only to Priority III and Priority IV vessels.

Response: MARAD agrees and has moved the provisions regarding Discretion Within Priority to a new section 296.23.

A new subsection has been added stating that the Secretary must follow the priority system established in 46 U.S.C. 53103(c) when awarding initial MSP Operating Agreements. In other words, MARAD cannot, for example, favor a Priority III applicant over a Priority II applicant.

8. Subsequent Awards of MSP Operating Agreements; New Section 296.24

Comment: One commenter indicated that if for any reason, after the award of an operating agreement, the contractor is unwilling or unable to enter into an MSP Operating Agreement, MARAD may award that operating agreement to an applicant having an eligible vessel that applied but was not awarded an MSP Operating Agreement or may award that operating agreement following a new round of applications at a later date.

Response: MARAD is adding section 296.24 to adopt these views by providing for subsequent awards of MSP Operating Agreements should an opening occur at a later date. Part of section 296.3(a) concerning failure of MSP Operating Agreement holders to commence operations pursuant to the terms of the MSP Operating Agreement has been restated and moved to the new section 296.24. Section 296.24 also provides procedures for awarding replacement MSP Operating Agreements subsequent to October 1, 2005. MARAD retains the discretion envisioned in the statute to award an MSP Operating Agreement either from the original pool of applicants or from a new pool of applicants. At the time subsequent awards are made, MARAD will determine if the original applicant pool is stale. Section 296.24 also states that inasmuch as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to procurement law or the Federal Acquisition Regulations. This determination results from recent ''bid protests'' that were filed with the Government Accountability Office and subsequently withdrawn.

Comment: One commenter argues that MSP applicants meeting the Section 2 Citizenship requirements, whose vessels have been found eligible but are wait listed for an award of an MSP Operating Agreement due to the lack of available slots, should receive first priority consideration if slots become available.

Response: Until October 1, 2005 MSP applicants meeting the Section 2 citizenship requirements will get priority because the priority system will apply, subject to approval of USTRANSCOM. After October 1, 2005 MARAD, in conjunction with USTRANSCOM, will select vessels on the basis of military utility and commercial viability, giving priority to applicants that have the same or more restrictive citizenship status as the original awardee of the slot returned to MARAD for reissue. New section 296.24 covers the procedures to be used by MARAD to select vessels if slots become available. No change is necessary in section 296.30.

9. General Conditions; Approval; Section 296.30

Comment: One commenter stated that MARAD should have the flexibility to consider newbuilds other than tank vessels, but that the language of section 296.30(b) seemed to preclude this as the starting date for the new MSP was established as October 1, 2005. The only exception listed in section 296.30(b)(2) is for vessels under charter to the Government. The commenter recommended language for a second exception specifically for newbuilds.

Response: One of the goals of the new MSP is to have 60 vessels selected and ready to enter the program on October 1, 2005. There were a couple of applications that featured newbuilds. For those applications, MARAD has the discretion to offer temporary slots to existing vessels if the newbuilds are selected for future inclusion when they are delivered. MARAD does not believe additional language is necessary.

Comment: One commenter noted that the sections under 296.30 address the situation of partial funding by Congress for the MSP, and that section 296.30(g) specifies that a determination on which vessels will be funded will be based on the most militarily useful and commercially viable vessels. The commenter argues that a determining consideration of which vessels will be funded should also include the Contractors' services and systems. In addition, the commenter believes that the priority system must be followed.

Response: MARAD believes that a determination of ''commercially viable'' vessels addresses the commenter's concerns about Contractors' services and systems. MARAD is not required to follow the initial application priority system in determining which MSP Operating Agreements to fund when the program is partially funded after October 1, 2005.

Comment: One commenter stated that tank vessels not built under the NDTVCP should not be treated the same as tank vessels built under the NDTVCP with regard to flagging out vessels in the event of termination of the MSP Operating Agreement with replacement by the Contractor or if sufficient MSP funding is not appropriated for any fiscal year by the 60th day of that fiscal year. Section 296.30(h) requires the owner and operator of any tank vessel to formally apply to MARAD pursuant to section 9 of the Shipping Act, 1916 to transfer and register the vessel under a foreign registry.

Response: MARAD agrees that the requirement for formally applying under section 9 of the Shipping Act, 1916, to flag out tankers applies only to tankers built under the NDTVCP. Appropriate changes have been made to sections 296.30(h)(2) and 296.30(h)(3).

Comment: One commenter argued that the transfer of MSP Operating Agreements should be allowed only to a person with the same or more restrictive U.S. citizenship priority. The commenter also urged that MARAD should render decisions on MSP transfer requests within 90 days—not with a minimum of 90 days without an upper limit to process such transfer requests.

Response: MARAD agrees that transfers of MSP Operating Agreements will be to persons of the same or more restrictive U.S. citizenship priority. However, the statute provides for both DOD and MARAD approval of transfers, and does not set a time limit for review. Therefore, MARAD will not limit MSP transfer requests to 90 days or less. MARAD does not believe any changes are necessary to the rule with regard to the commenter's suggestions.

Comment: One commenter believes that a transfer from a holder of an MSP Operating Agreement under the Third citizenship category be required to transfer that MSP Operating Agreement to another person that qualifies under the Third citizenship category. In connection, the commenter requests that section 296.30(f)(2)(B) be reworded to

''Owned by a person that is a Documentation Citizen and operated by a person that is a Section 2 Citizen.''

Response: MARAD agrees to this language and has revised the regulation accordingly.

10. MSP Assistance Conditions; Section 296.31

Comment: One commenter requested that MARAD amend the proposed regulations to allow U.S. Merchant Marine Academy (USMMA) cadets to be carried either on the MSP vessel or on non-MSP U.S.-flag vessels in the Contractor's fleet.

Response: MARAD does not agree to this change. One of the requirements for receiving an MSP Operating Agreement is that MSP vessels carry USMMA cadets. Section 296.31 has been amended for clarity.

11. Payment procedures; Section 296.41

Comment: One commenter claims that MARAD has exceeded its authority in section 296.41(c)(1)(v) by limiting the number of days that a vessel may be drydocked, surveyed, inspected, or repaired without MARAD approval to 30 days, and requests removal of this section or, alternatively, an increase in the number of days to 45.

Response: MARAD believes thirty days is a reasonable limit. If a Contractor anticipates that the number of repair days will exceed this amount, a request for MARAD approval may be submitted by the Contractor.

Comment: One commenter believes that MARAD must set a limit per voyage on carriage of preference cargo of 7,500 tons bagged and/or bulk, or alternatively, MARAD should adopt rules requiring that full shipment lot bids submitted to agricultural agencies on behalf of MSP vessels be augmented with the per ton value of the daily government assistance from MSP.

Response: Section 296.41(c)(i) states that no payments will be made ''[f]or any day that an MSP Agreement Vessel is engaged in transporting more that 7,500 tons* * *of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Act provided that it is bulk cargo.'' Section 296.41(c)(i) comports with the language in 46 U.S.C. 53106 which does not allow for ''7,500 bagged'' preference cargo or a reduction based on a per ton value of the daily government MSP assistance. Therefore, MARAD is not changing section 296.41(c)(i).

MARAD has replaced the words ''of up to'' preceding $2,600,000 in the first paragraph in section 296.41 with ''equal to'' to comport with the governing statute, 46 U.S.C. 53106(a).

12. Administrative Determinations; Section 296.50

Section 296.50(a) has been amended to clarify and to indicate that appeals to the Administrator under this paragraph are a prerequisite to exhausting administrative remedies. Section 296.50(b) has been amended for purposes of clarity.

13. Miscellaneous Editorial and Clarifying Changes Adopted

The commenters submitted several editorial and clarifying comments which MARAD is incorporating in this final rule. In section 296.11(a)(2), the reference to foreign commerce of the United States, and in sections 296.31(d)(2) and 296.41, the descriptions of ''foreign trade'' are being replaced by the words ''foreign commerce'' because the reference and the descriptions closely mirror the definition of ''foreign commerce'' in section 296.2.

MARAD has amended Section 296.31(b) to clarify funding levels and vessel selection under a continuing resolution, and section 296.31(d)(3) to clarify the meaning of the term ''participates''.

MARAD has added the phrase ''or if not current year data, a Schedule 310 of the MA–172'' to section 296.32(b) to clarify MARAD's expectations if current year data is not available.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This rulemaking is considered to be an economically significant regulatory action under section 3(f) of Executive Order 12866 and is also considered a major rule for purposes of Congressional review under Pub. L. 104–121. Since the program is designed to support up to 60 vessels in FY 2006, each receiving equal to $2.6 million annually, the Maritime Administrator finds that the program may have an annual effect on the economy of $100 million or more. Thus, it is considered to be a significant rule under Executive Order 12866 and DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and has been reviewed by OMB. Under Executive Order 12866, MARAD is required to provide an analysis of information developed as part of its decision making process, including the benefits anticipated from the regulatory action, the costs anticipated from the action, and an assessment of the costs and benefits of potentially effective and reasonably feasible alternatives to the regulatory action. MARAD's regulatory analysis follows.

Background

The Maritime Security Act of 1996 (MSA) was passed with strong bipartisan support in Congress and was signed into law on October 8, 1996. The MSA outlined, in detail, the establishment of a fleet of vessels, pursuant to agreement, engaged in U.S. foreign commerce and available for use by the Department of Defense (DOD) during times of war or national emergency. Based on the success of the program under the original MSA, Congress, as part of the recently enacted MSA 2003, created a new program that permits an increase in both the number of participant vessels as well as the payment amounts such vessels will receive under the program.

Benefits

The major benefit of the MSA 2003 is that it will provide DOD with assured access of up to 60 vessels that may be used during times of war or national emergency. The existing MSP fleet of 47 vessels consists primarily of containerships, which are mainly designed for the sustainment phase of sealift operations that support military operations. In Operation Iraqi Freedom, 40 MSP vessels were employed in support of military operations. Four additional MSP ships have been utilized for reconstruction of Iraq. In addition, the MSP provides necessary support to help maintain a U.S.-flag presence in international commerce. The MSP vessels are a major component of the U.S.-flag capability that contributes to the U.S. mariner base for utilization on both commercial and DOD organic fleets. The MSP also supports the training of merchant mariners by including United States Merchant Marine Academy cadets on voyages of MSP vessels.

Costs

From the inception of the program, Congress set strict limits, not subject to the Secretary of Transportation's discretion, on the number of participant vessels and the annual payment per vessel. The MSA 2003 will permit an increase in the number of participant vessels from 47 authorized under the original MSA (for FYs 1997–2005) to 60 (authorized for FYs 2006–2015). Similarly, the payments per vessel are increased from $2.1 million (under the original MSA for FYs 1997–2005) to $2.6 million (for FYs 2006–2008); $2.9 million (for FYs 2009–2011); and $3.1 million (for FYs 2012–2015). The maximum programmatic payment that

Congress directed through the MSA 2003 is $156 million, $174 million, and $186 million per year for FYs 2006–2008, 2009–2011, and 2012–2015, respectively, subject to appropriation.

Analysis of Alternatives

The MSA 2003 expands the MSP program that was originally established by Congress in 1996 by increasing the number of participant vessels, annual funding amounts, and expenditure amounts for the new MSP program. However, beyond the increased size of the new MSP program under the MSA 2003, the underlying statutes are substantially similar, and envision a new MSP program that is essentially a continuation of the prior MSP program under the original MSA. Under both the original MSA and the MSA 2003, Congress prescribed the salient details of the MSP program, including ship ownership, vessel eligibility, vessel documentation, program duration, the number of participants, the amount of funding, and, under the MSA 2003, guidelines regarding the composition of the fleet. Since the MSA 2003 provides detailed requirements for continuing the MSP program, MARAD has little discretion to propose regulatory options. In fact, given the highly prescriptive nature of both the original MSA and MSA 2003, MARAD believes that no viable regulatory alternatives exist in lieu of implementing these regulations, which continue and expand the current MSP program.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among various local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulatory Flexibility

Because no notice of proposed rulemaking was required prior to issuance of this final rule, as set forth in section 3533 of Subtitle C, Title XXXV, of the National Defense Authorization Act for Fiscal Year 2004, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) do not apply. However, the Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We anticipate that few, if any, small entities will participate in this program due to the nature of the shipping industry and the capital costs associated with ships that are eligible for the program. In addition, because this final rule implements a financial assistance program, it does not impose an economic burden on small entities.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and we have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This final rule does not change the environmental effects of the current MSP, which has been operational since FY 1997. This final rule implements a financial assistance program which results in a negligible, if any cumulative effect on the environment. The vessels eligible for the MSP under the MSA 2003 (1) will continue to operate under the U.S. flag, and will continue to be governed by U.S.-flag state control while operating in the foreign commerce of the United States; and (2) are and will continue to be designed, constructed, equipped and operated in accordance with stringent United States Coast Guard and International Maritime Organization standards for maritime safety and maritime environmental protection.

Paperwork Reduction

The Office of Management and Budget extended its approval of an information collection under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 *et seq.*) for three years on January 31, 2005. The title of the information collection is Application and Reporting Elements for Participation in the Maritime Security Program, OMB Control No. 2133–0525.

This information collection requires vessel operators to continue to submit initial applications, amendments to applications (if necessary), and monthly and annual reports. We estimate that the number of annual respondents under the new MSP program will increase from 12.5 to 15, the average total number of annual responses will increase from 132 to 198.5, and that the average annual recordkeeping and reporting burden program total will increase from 152 hours to 224 hours. We estimate that the total average annual cost burden associated with this information collection will be $10,726.65, or $715.11 per respondent.

List of Subjects in 46 CFR Part 296

Assistance payments, Maritime carriers, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule adding part 296 to title 46, Code of Federal Regulations, which was published at 69 FR 43328 on July 20, 2004, is revised and adopted as a final rule to read as follows:

PART 296—MARITIME SECURITY PROGRAM (MSP)

Subpart A—Introduction

Sec.
296.1 Purpose.
296.2 Definitions.
296.3 Applications.
296.4 Waivers.

Subpart B—Eligibility

296.10 Citizenship requirements of owners, charterers and operators.
296.11 Vessel requirements.
296.12 Applicants.

Subpart C—Priority for Granting Applications

296.20 Tank vessels.
296.21 Participating Fleet Vessels.
296.22 Other vessels.
296.23 Discretion within priority.
296.24 Subsequent awards of MSP Operating Agreements.

Subpart D—Maritime Security Program Operating Agreements

296.30 General conditions.
296.31 MSP assistance conditions.
296.32 Reporting requirements.

Subpart E—Billing and Payment Procedures

296.40 Billing procedures.
296.41 Payment procedures.

Subpart F—Appeals Procedures

296.50 Administrative determinations.

Subpart G—Maintenance and Repair Reimbursement Pilot Program

296.60 Applications.

Authority: Pub. L. 108–136, 117 Stat. 1392; 46 App. U.S.C. 1114(b), 49 CFR 1.66.

Subpart A—Introduction

§ 296.1 Purpose.

This part prescribes regulations implementing the provisions of Subtitle C, Maritime Security Fleet Program, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003), governing Maritime Security Program (MSP) payments for vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105. The MSA 2003 provides for joint responsibility between the Department of Defense (DOD) and the Department of Transportation (DOT) for administering the law. These regulations provide the framework for the coordination between DOD and DOT in implementing the MSA 2003. Implementation of the MSA 2003 has been delegated by the Secretary of Transportation to the Maritime Administrator, U.S. Maritime Administration and by the Secretary of Defense to the Commander, U.S. Transportation Command, respectively.

§ 296.2 Definitions.

For the purposes of this part:

Act means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 *et seq*.).

Administrator means the Maritime Administrator, U.S. Maritime Administration (MARAD), U.S. DOT, who is authorized by the Secretary of Transportation to administer the MSA 2003, in consultation with the Commander, U.S. Transportation Command (USTRANSCOM).

Agreement Vessel means a vessel covered by an MSP Operating Agreement.

Applicant means an applicant for an MSP Operating Agreement. The term, ''applicant'' excludes a trust.

Bulk Cargo means cargo that is loaded and carried in bulk without mark or count.

Chapter 121 means the vessel documentation provisions of chapter 121 of title 46, United States Code.

Coastwise Trade means trade between points in the United States.

Commander means Commander, USTRANSCOM, who is authorized by the Secretary of Defense to administer the MSA 2003, in consultation with the Administrator.

Contracting Officer means the Associate Administrator for National Security, MARAD.

Contractor means the owner or operator of a vessel that enters into an MSP Operating Agreement for the vessel with the Secretary of Transportation (acting through MARAD) pursuant to § 53103 of the MSA 2003. The term, ''Contractor'' excludes a trust.

Defense Contractor means a person that operates or manages United States documented vessels for the Secretary of Defense or charters vessels to the Secretary of Defense and has entered into a special security agreement with the Secretary of Defense.

Documentation Citizen means an entity able to document a vessel under 46 U.S.C. chapter 121. This definition includes a trust.

DOD means the U.S. Department of Defense.

Domestic Trade means trade between points in the United States.

Eligible Vessel means a vessel that meets the requirements of § 53102(b) of the MSA 2003.

Emergency Preparedness Agreement means an agreement, required by § 53107 of the MSA 2003, between a Contractor and the Secretary of Transportation (acting through MARAD) to make certain commercial transportation resources available during time of war or national emergency or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation.

Enrollment means the entry into an MSP Operating Agreement with MARAD to operate a vessel(s) in the MSP Fleet in accordance with § 296.30.

Fiscal Year means any annual period beginning on October 1 and ending on September 30.

Foreign Commerce means:

(1) For any vessel other than a liquid or a dry bulk carrier, a cargo freight service, including direct and relay service, operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement under section 12105 of title 46, United States Code, where the origination point or the destination point of any cargo carried is the United States, regardless of whether the vessel provides direct service between the United States and a foreign country, or commerce or trade between foreign countries; and

(2) For liquid and dry bulk cargo carrying services, includes trading between ports in the United States and foreign ports or trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels to freely compete with foreign-flag bulk carrying vessels in their operation or in competing for charters.

LASH Vessel means a lighter aboard ship vessel.

Militarily Useful is defined, in terms of minimum military capabilities, according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance.

MSA 2003 means the Maritime Security Act of 2003.

MSP Fleet means the fleet of vessels established under section 53102(a) of the MSA 2003 and operated under MSP Operating Agreements.

MSP Operating Agreement means the assistance agreement between a Contractor and MARAD that provides for MSP payments, but is not a ''procurement contract.''

MSP Payments means the payments made for the operation of U.S.-flag vessels in the foreign commerce.

Noncontiguous Domestic Trade means transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

Operating Day means any calendar day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

Operator is a person that either owns a vessel and operates that vessel directly or charters in a vessel at a financial risk through a demise charter that transfers virtually all the rights and obligations of the vessel owner to the vessel operator, such as that of crewing, supplying, maintaining, insuring and navigating the vessel.

Owner means an entity that has title and/or beneficial ownership of a vessel. Only an owner that is a person is eligible to enter into an MSP Operating Agreement.

Participating Fleet Vessel means any vessel that:

(1) On October 1, 2005—

(i) Meets the citizenship requirements of paragraph (1), (2), (3), or (4) of section 53102(c) of the MSA 2003;

(ii) Is less than 25 years of age, or is less than 30 years of age in the case of a LASH vessel; and

(2) On December 31, 2004, is covered by an MSP Operating Agreement.

Person includes corporations, limited liability companies, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country. For purposes of holding an MSP Operating Agreement, the term ''person'' excludes a trust.

Roll-on/Roll-off Vessel means a vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

SecDef means Secretary of Defense acting through the Commander USTRANSCOM.

Section 2 Citizen means a United States citizen within the meaning of section 2 of the Shipping Act, 1916, 46 U.S.C. 802, without regard to any statute that ''deems'' a vessel to be owned and operated by a Section 2 Citizen.

Secretary means the Secretary of Transportation acting through the Maritime Administrator.

Tank Vessel means, as stated in 46 U.S.C. 2101(38), a self-propelled tank vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. In addition, the vessel must be double hulled and capable of carrying simultaneously more than two separated grades of refined petroleum products.

Transfer of an MSP Operating Agreement includes any sale, assignment or transfer of the MSP Operating Agreement, either directly or indirectly, or through any sale, reorganization, merger, or consolidation of the MSP Contractor.

United States includes the 50 U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

United States Citizen Trust means:

(1) Subject to paragraph (3) of this definition, a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a Section 2 Citizen; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a Section 2 Citizen, or involving any other person that is not a Section 2 Citizen, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a Section 2 Citizen has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not Section 2 Citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition shall not be considered to prohibit a person who is not a Section 2 Citizen from holding more than 25 percent of the beneficial interest in a trust.

United States Documented Vessel means a vessel documented under 46 U.S.C. chapter 121.

§ 296.3 Applications.

(a) *Action by MARAD.—Time Deadlines.* Applications for enrollment of vessels in the MSP were due by October 15, 2004 to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Any applications received before October 15, 2004 were deemed to have been submitted on October 15, 2004. Within 90 days after receipt of a completed application, the Secretary was obligated to approve the application, in conjunction with the SecDef, or provide in writing the reason for denial of that application. Execution of a standard MSP Operating Agreement took place reasonably soon after approval of the application. Contractors of MSP Operating Agreements were required to submit ownership information and signed charters to MARAD for approval by July 1, 2005.

(b) *Action by the Applicant.* Each applicant for an MSP Operating Agreement was required to submit an application under OMB control number 2133–0525 to the Secretary, Maritime Administration in the manner prescribed on that form. Application forms were made available from MARAD's Office of Sealift Support, or the application form could be downloaded from the MARAD Web site, *http:www.marad.dot.gov,* Information required included:

(1) An *Affidavit of Section 2 Citizenship* that comports with the requirements of 46 CFR part 355, if applying as a Section 2 Citizen. Otherwise, an affidavit which demonstrates that the applicant is qualified to document a vessel under 46 U.S.C. chapter 121 is required. If the applicant is a vessel operator and proposes to employ a vessel manager, then the applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements applicable to the applicant;

(2) *Certificate of Incorporation;*

(3) *Copies of by-laws or other governing instruments;*

(4) *Maritime related affiliations;*

(5) *Financial data:*

(i) Provide an audited financial statement or a completed MARAD Form MA–172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Provide estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items;

(6) *Intermodal network:*

(i) If applicable, a statement describing the applicant's operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(ii) The number of containers and their twenty-foot equivalent units (TEUs) by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased; and

(iii) The number of chassis by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased;

(7) *Diversity of trading patterns:* A list of countries and trade routes serviced along with the types and volumes of cargo carried;

(8) *Applicant's record of owning and/or operating vessels:* Provide number of ships owned and/or operated, specifying flag, in the last ten years, trades involved, number of employees in your ship operations department, vessel or ship managers utilized in the operation of your vessels, and any other information relevant to your record of owning or operating vessels;

(9) *Bareboat charter arrangements,* if applicable;

(10) *Vessel data including vessel type, size, and construction date;*

(11) *Military Utility:* Provide an assessment of the value of the vessel to DOD sealift requirements. Provide characteristics which indicate the value of the vessels to DOD including items of

specific value, *e.g.*, ramp strengths, national defense sealift features;

(12) *Special Security Agreements:* If applicable, provide a copy of any Special Security Agreement;

(13) If applicable, *Certification from documentation citizen who is the demise charterer of the MSP vessel:* In a letter submitted at the time of the application addressed to the Administrator and the Commander from the Chief Executive Officer, or equivalent, of a documentation citizen that is the proposed Contractor of an MSP Operating Agreement, provide a statement that there are no treaties, statutes, regulations, or other laws of the foreign country(ies) of the parent, that would prohibit the proposed Contractor from performing its obligations under an MSP Operating Agreement. The statement should be substantially in the following format:

''I, _____, Chief Executive Officer of _____, certify to you that there are no treaties, statutes, regulations, or other laws of the foreign country(ies) of ____'s ultimate foreign parent or intermediate parents that would prohibit ____ from performing its obligations under an Operating Agreement with the Maritime Administration pursuant to the Maritime Security Act of 2003.'';

(14) *Agreement from the ultimate foreign parent of the documentation citizen:* An agreement to be signed and submitted at the time of application from the equivalent of the Chief Executive Officer of the ultimate foreign parent of a documentation citizen not to influence the operation of the MSP vessel in a manner that will adversely affect the interests of the United States. The Agreement should be substantially in the following format:

''I, _____, am the Chief Executive Officer [or equivalent] of _____, the ultimate foreign parent of _____, a documentation citizen of the United States that is applying for an MSP Operating Agreement. I agree on behalf of the ''foreign parent'' that neither _____ (the ultimate foreign parent) nor any representative of _____ (the ultimate foreign parent) will in any way influence the operation of the MSP vessel in a manner that will adversely affect the interests of the United States.'';

(15) *Replacement Vessel Plan and Age Waiver:* If applicable, an applicant must submit a replacement vessel plan along with an age waiver request if the applicant seeks an age waiver for an existing vessel(s). The vessel replacement plan shall include the vessel's characteristics, a letter of intent or other document indicating agreement for purchase of vessel, and a forecast of operations for five years for the replacement vessel. The age restriction for over-age vessels shall not apply to a Participating Fleet Vessel during the 30-month period beginning on the date the vessel begins operating under an MSP Operating Agreement under the MSA 2003 provided that the Secretary has determined that the Contractor has entered into an arrangement for a replacement vessel that will be eligible to be included in an MSP Operating Agreement, and;

(16) *Anti-Lobbying Certificate:* A certificate as required by 49 CFR part 20 stating that no funds provided under MSP have been used for lobbying to obtain an Operating Agreement.

(Approved by the Office of Management and Budget under Control Number 2133–0525)

§ 296.4 Waivers.

In General—In special circumstances, and for good cause shown, the procedures prescribed in this part may be waived in writing by the Secretary, by mutual agreement of the Secretary in consultation with the SecDef, and the Contractor, so long as the procedures adopted are consistent with the MSA 2003 and with the objectives of these regulations.

Subpart B—Eligibility

§ 296.10 Citizenship requirements of owners, charterers and operators.

Citizenship requirements are deemed to have been met if during the entire period of an MSP Operating Agreement under this chapter that applies to the vessel, all of the conditions of any of the paragraphs (a), (b), (c), or (d) of this section are met, and subject to conditions in paragraph (e):

(a) A vessel to be included in an MSP Operating Agreement is owned and operated by one or more persons that are Section 2 Citizens.

(b) A vessel to be included in an MSP Operating Agreement is owned by either a person that is a Section 2 Citizen or a United States Citizen Trust, and the vessel is demise chartered to a non-Section 2 Citizen—

(1) That is eligible to document the vessel under 46 U.S.C. chapter 121;

(2) Whose chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors are Section 2 Citizens, and are appointed and subject to removal only upon approval by the Secretary as follows:

(i) Proposed changes to the chairman of the board, chief executive officer, and membership of the board of directors must be submitted to the Administrator 60 days before scheduled to take effect; and

(ii) MARAD must approve or disapprove changes within 30 days of receiving the proposed changes;

(3) That certifies to the Secretary in a format substantially similar to the format at § 296.3(b)(13) that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor from performing its obligations under an MSP Operating Agreement at the time of application for an MSP Operating Agreement; and

(4) The ultimate foreign parent of that person proffers, at the time of application for an MSP Operating Agreement, an agreement in a format substantially similar to the format at § 296.3(b)(14) not to influence the vessel's operation in a way that is detrimental to the United States.

(c) A vessel to be included in an MSP Operating Agreement is owned and operated by a defense contractor or a related person to include affiliated or related companies within the same corporate group that:

(1) Is eligible to document the vessel under 46 U.S.C. chapter 121;

(2) Operates or manages other United States-documented vessels for the SecDef, or charters other vessels to the SecDef;

(3) Has entered into a special security agreement with the SecDef;

(4) Certifies to the Secretary, at the time of application, in a format substantially similar to the format of § 296.3(b)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor from performing its obligations under an MSP Operating Agreement; and

(5) Has its ultimate foreign parent proffer, at the time of application for an MSP Operating Agreement, an agreement in a format substantially similar to the format of § 296.3(b)(14) not to influence the vessel's operation in a way that is detrimental to the United States.

(d) The vessel is owned by a documentation citizen and demise chartered to a Section 2 Citizen.

(e) Where applicable, the Secretary and the SecDef shall notify the Senate Committees on Armed Services, and Commerce, Science, and Transportation and the House of Representatives Committee on Armed Services that they concur with the certifications by the documentation citizens under § 296.3(b)(13) and that they have reviewed the agreements proffered by the ultimate foreign parent under § 296.3(b)(14), and agree that there are no other legal, operational, or other impediments that would prohibit the contractors for the vessels from performing their obligations under MSP Operating Agreements.

§ 296.11 Vessel requirements.

(a) *Eligible Vessel.* A vessel is eligible to be included in an MSP Operating Agreement if:

(1) The vessel is:

(i) Determined by the SecDef to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(ii) Determined by the Secretary to be commercially viable;

(2) The vessel is operated or, in the case of a vessel to be purchased or constructed, will be operated to provide transportation in the foreign commerce;

(3) The vessel is self-propelled and is:

(i) A Roll-on/Roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units and is 15 years of age or less on the date the vessel is included in the MSP;

(ii) A tank vessel that is constructed in the United States after November 24, 2003;

(iii) A tank vessel that is 10 years of age or less on the date the vessel is included in the MSP Fleet;

(iv) A LASH vessel that is 25 years of age or less on the date the vessel is included in the MSP fleet; or

(v) Any other type of vessel that is 15 years of age or less on the date the vessel is included in the MSP fleet;

(4) The vessel is:

(i) A United States documented vessel under 46 U.S.C. chapter 121; or

(ii) Not a United States-documented vessel under 46 U.S.C. chapter 121, but the owner of the vessel has demonstrated an intent to have the vessel documented under 46 U.S.C. chapter 121 at the time the vessel is to be included in the MSP fleet; and

(A) The vessel is eligible for a certificate of inspection if the Secretary of the Department in which the United States Coast Guard is operating determines that:

(*1*) The vessel is classed and designed in accordance with the rules of the American Bureau of Shipping (ABS) or another classification society accepted by such Secretary;

(*2*) The vessel complies with applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming a U.S.-flag vessel; and

(*3*) The flag country has not been identified by such Secretary as inadequately enforcing international vessel regulations.

(B) [Reserved]

(b) *Waiver of Age Restriction of Vessels.* The SecDef, in conjunction with the Secretary, may waive the age restriction in paragraph (a) of this section if the Secretaries jointly determine that the waiver:

(1) Is in the national interest;

(2) Is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) Is necessary due to the lack of availability of other vessels and operators that comply with the requirements of the MSA 2003.

(c) *Telecommunications and Other Electronic Equipment.* The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an MSP Operating Agreement shall be deemed to satisfy all Federal Communications Commission equipment certification requirements, if

(1) Such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) That country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) At the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards (*see* 49 CFR Chapter I).

§ 296.12 Applicants.

Applicant. Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the MSP Fleet pursuant to the provisions of the MSA 2003. Applications shall be addressed to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Subpart C—Priority for Granting Applications

§ 296.20 Tank vessels.

(a) First priority for the award of MSP Operating Agreements under MSA 2003 shall be granted to a tank vessel that is constructed in the United States after October 1, 2004.

(b) First priority for the award of MSP Operating Agreements under the MSA 2003 may be granted to a tank vessel that is less than ten years of age on the date it enters an MSP Operating Agreement:

(1) Provided: (i) That the Contractor agrees to execute a binding agreement approved by the Secretary for a replacement vessel to be operated under the MSP Operating Agreement and to be built in the United States not later than nine months after the first date appropriated funds are available for construction and operating assistance for a minimum of three tank vessels;

(ii) A tank vessel under this section is eligible to be included in the MSP under § 296.11(a); and

(iii) A tank vessel under this section is owned and operated during the period of the MSP Operating Agreement by one or more persons that are Section 2 Citizens;

(2) No payment can be made for an existing tank vessel granted priority one status after the earlier of:

(i) Four years following the date this MSP Operating Agreement is effective, except if amounts are available for construction of a minimum of three tank vessels under the National Defense Tank Vessel Construction Assistance Program (NDTVCP) by October 1, 2007, then no payments shall be made for the existing ''tank vessel'' after four years following the date such amounts are available; or

(ii) The date of delivery of the replacement tank vessel constructed in the United States after October 1, 2004.

(3) The Secretary will not enter into more than five MSP Operating Agreements for tank vessels under this priority. If the five tank vessel MSP Operating Agreement slots are not fully subscribed, the Secretary, in consultation with the SecDef, may award the non-subscribed slots to lower priority vessels, if deemed appropriate. If the Secretary determines that no funds are, or are likely to be, allocated for any tank vessel construction in the United States, the five slots may nevertheless be awarded to existing tank vessels or the slots may be awarded permanently to any eligible vessels. The Secretary may temporarily award a slot reserved for a tank vessel under construction to a lower priority vessel during the construction period of that vessel if an existing tank vessel offered by the tank vessel Contractor is not eligible for priority for that slot. If no existing tank vessel is offered by the tank vessel Contractor, the Secretary may temporarily award an MSP Operating Agreement to any eligible vessel of another Contractor until a new tank vessel's construction is completed in the United States. Such temporary MSP Operating Agreements may be terminated under terms set forth in the temporary MSP Operating Agreement.

§ 296.21 Participating Fleet Vessels.

(a) *Priority.*—To the extent that appropriated funds are available after applying the first priority, tank vessels,

in § 296.20, the second priority is applicable to Participating Fleet Vessels.

(b) *Number of MSP Operating Agreements.*—MARAD will not enter into more than 47 MSP Operating Agreements for Participating Fleet Vessels.

(c) *Reduction of Participating Fleet Vessel MSP Operating Agreements.*—The number of MSP Operating Agreements available to Participating Fleet Vessels shall be reduced by one for:

(1) Each Participating Fleet Vessel for which an application for enrollment in the MSP is not received by the Secretary, Maritime Administration on October 15, 2004; or

(2) Each Participating Fleet Vessel for which an application for enrollment in the MSP is received by the Secretary, Maritime Administration on October 15, 2004, but the application is not approved by the Secretary of Transportation and the SecDef by January 12, 2005.

(d) *Authority to Enter into an MSP Operating Agreement*—(1) Applications for inclusion of a Participating Fleet Vessel under the priority in paragraph (a) of this section will be accepted only from a person that has authority to enter into an MSP Operating Agreement for the vessel with respect to the full term of the MSP Operating Agreement. Applicants must certify that they have the requisite authority as of October 1, 2005 and for the full period of the MSP Operating Agreement thereafter and provide the basis on which they rely for such certification, such as a copy of a vessel title of ownership or a demise charter that remains in effect until September 30, 2015.

(2) The full term of the MSP Operating Agreement is the period from October 1, 2005 through September 30, 2015. If a vessel proposed to be included in the MSP will become ineligible for the program prior to September 30, 2015, due to vessel age restrictions, then the full term of the MSP Operating Agreement for that vessel for purposes of paragraph (d)(1) of this section is the period the vessel meets the applicable age restrictions. MARAD may still award an MSP Operating Agreement through September 30, 2015, to an applicant having authority to enter into an MSP Operating Agreement for a vessel whose age eligibility expires before that date. For companies requesting an age waiver, the Applicant must submit an appropriate replacement vessel at least 120 days prior to the date of expiration of age eligibility.

(3) For the purposes of paragraph (d)(1) of this section, in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel (provided the owner of the vessel is a ''person'' as defined in § 296.2) shall be treated as having the authority referred to in paragraph (d)(1) of this section.

(4) If two or more applicants claim authority for the same vessel, the Secretary may request additional information bearing on the issue of which party has authority to enter into an MSP Operating Agreement, and the Secretary shall, in his/her sole discretion, decide the matter as he/she deems appropriate.

(e) During the 30-month period commencing October 1, 2005, the age restrictions set forth under § 296.11(a) and § 296.41(c) do not apply to a Participating Fleet Vessel operating under an MSP Operating Agreement, provided:

(1) The Contractor has entered into an arrangement to obtain and operate under that MSP Operating Agreement a replacement vessel for that Participating Fleet Vessel; and

(2) The Secretary determines that the replacement vessel will be eligible to be included in the MSP Fleet under § 296.11(a).

(f) In the event that a Participating Fleet Vessel will be unavailable to participate in the MSP on October 1, 2005, due to an unforeseen casualty to the vessel, a Contractor may offer an eligible replacement vessel. The replacement vessel must subsequently be approved by MARAD and DOD. The replacement vessel must operate under an MSP Operating Agreement in sufficient time to meet the 180 minimum operation days required during the fiscal year to avoid being in default of the MSP Operating Agreement.

§ 296.22 Other vessels.

(a) *Third Priority.*—To the extent that appropriated funds are available after applying the first priority, tank vessels, in § 296.20, and the second priority, Participating Fleet Vessels, in § 296.21, the third priority is for any other vessel that is eligible to be included in an MSP Operating Agreement under § 296.11(a), and that, during the period of that MSP Operating Agreement, will be:

(1) Owned and operated by one or more persons that are Section 2 Citizens; or

(2) Owned by a person that is eligible to document the vessel under 46 U.S.C. chapter 121 and operated by a person that is a Section 2 Citizen.

(b) *Fourth Priority.*—To the extent that appropriations are available after applying the first priority in § 296.20, the second priority in § 296.21, and the third priority in paragraph (a) of this section, the fourth priority is for any other vessel that is eligible to be included in an MSP Operating Agreement under § 296.11(a).

§ 296.23 Discretion within priority.

The Secretary—

(a) Subject to paragraph (b) of this section, may award MSP Operating Agreements within each priority as the Secretary considers appropriate; and

(b) Shall award MSP Operating Agreements within a priority—

(1) In accordance with operational requirements specified by the SecDef;

(2) In the cases of the Priorities III and IV, according to the applicants' records of owning and operating vessels; and

(3) Subject to the approval of the SecDef.

(c) The Secretary does not have discretion to override the priority requirements with respect to the initial award of MSP Operating Agreements.

§ 296.24 Subsequent awards of MSP Operating Agreements.

(a) Until October 1, 2005, if, for any reason, after the award of an MSP Operating Agreement, the Applicant is unwilling or unable to commence operations pursuant to the terms of the MSP Operating Agreement, MARAD may, pursuant to the priority criteria, award that MSP Operating Agreement to an Applicant having an eligible vessel that applied but was not awarded an MSP Operating Agreement.

(b) After October 1, 2005, MARAD intends to ensure that all available MSP Operating Agreements are fully utilized at all times, in order to maximize the benefit of the MSP. Accordingly, when an MSP Operating Agreement becomes available through termination by the Secretary, expiration of a temporary MSP Operating Agreement or early termination by the MSP contractor, and no transfer under 46 U.S.C. 53105(e) is involved, MARAD will reissue the MSP Operating Agreement pursuant to the following criteria.

(1) The proposed vessel must meet the requirements for vessel eligibility in 46 U.S.C. 53102(b);

(2) The applicant must meet the vessel ownership and operating requirements for priority in 46 U.S.C. 53103(c); and

(3) Priority will be assigned in accordance with operational requirements specified by the SecDef.

(c) MARAD will use the following procedures in reissuing an MSP Operating Agreement. MARAD and USTRANSCOM will determine if the applications received on October 15, 2004 form an adequate pool for award of a reissued MSP Operating Agreement. If so, MARAD will award a reissued MSP Operating Agreement from that pool of qualified applicants in its discretion, subject to approval of the SecDef. MARAD and USTRANSCOM may decide to open a new round of applications. Applicants for reissued MSP Operating Agreements must meet the citizenship requirements of Priority III. Inasmuch as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to any procurement law or the Federal Acquisition Regulations.

Subpart D—Maritime Security Program Operating Agreements

§ 296.30 General conditions.

(a) *Approval.* (1) The Secretary, in conjunction with the SecDef, may approve applications to enter into an MSP Operating Agreement and make MSP Payments with respect to vessels that are determined by the Secretary to be commercially viable and those that are deemed by the SecDef to be militarily useful for meeting the sealift needs of the United States in time of war or national emergencies. The Secretary announced an initial award of 60 MSP Operating Agreements on January 12, 2005. In addition, the Secretary advised those applicants found to be eligible but not included in the initial award that those applicants will be wait-listed for an award of an MSP Operating Agreement if additional slots become available.

(2) The Commander established general evaluation criteria for operational requirements for considering replacement vessels described in § 296.21(e), and for vessels eligible under the third and fourth priorities described in § 296.22. These general evaluation criteria were made available by the Commander in sufficient time for preparing applications.

(b) *Effective date.* (1) *General Rule.* Unless otherwise provided, the effective date of an MSP Operating Agreement is October 1, 2005.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in an MSP Operating Agreement that is on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Agreement (EPA) provided by § 53107 of the MSA 2003, unless an earlier date is requested by the applicant, the effective date for an MSP Operating Agreement shall be:

(i) The expiration or termination date of the Government charter covering the vessel; or

(ii) Any earlier date on which the vessel is withdrawn from that charter, but not before October 1, 2005.

(c) *Replacement Vessels.* A Contractor may replace an MSP vessel under an MSP Operating Agreement with another vessel that is eligible to be included in the MSP under § 296.11(a), if the Secretary, in conjunction with the SecDef, approves the replacement vessel. The replacement vessel must qualify with the same or with more militarily useful capability as the MSP vessel to be replaced for operational requirements as determined by the Commander.

(d) *Termination by the Secretary.* If the Contractor materially fails to comply with the terms of the MSP Operating Agreement:

(1) The Secretary shall notify the Contractor and provide a reasonable opportunity for the Contractor to comply with the MSP Operating Agreement;

(2) The Secretary shall terminate the MSP Operating Agreement if the Contractor fails to achieve such compliance; and

(3) Upon such termination, any funds obligated by the relevant MSP Operating Agreement shall be available to the Secretary to carry out the MSP.

(e) E*arly termination by Contractor, generally.* An MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary not later than 60 days before the effective date of the proposed termination that the Contractor intends to terminate the MSP Operating Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments, and by its EPA for the full term, from October 1, 2005 through September 30, 2015, of the MSP Operating Agreement.

(f) *Early termination by Contractor, with available replacement.* An MSP Operating Agreement shall terminate without further obligation on the part of the Contractor upon the expiration date of the three-year period beginning on the date a vessel begins operating under the MSP, if:

(1) The Contractor notifies the Secretary, by not later than two years after the date the vessel begins operation under an MSP Operating Agreement, that the Contractor intends to terminate the MSP Operating Agreement; and

(2) The Secretary, in conjunction with the SecDef, determines that:

(i) An application for an MSP Operating Agreement has been received for a replacement vessel that is acceptable to the Secretaries; and

(ii) During the period of an MSP Operating Agreement that applies to the replacement vessel, the replacement vessel will be:

(A) Owned and operated by one or more persons that are Section 2 Citizens; or

(B) Owned by a person that is a Documentation Citizen and operated by a person that is a Section 2 Citizen.

(g) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of MSA 2003 for that fiscal year, the Secretary will notify the Senate's Committees on Armed Services and Commerce, Science, and Transportation, and the House of Representatives' Committee on Armed Services, that MSP Operating Agreements for which sufficient funds are not available, will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the SecDef, shall select the vessels to retain under MSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and, each Contractor shall be released from its obligations under the MSP Operating Agreement. Final payments under the terminated MSP Operating Agreements shall be made in accordance with § 296.41. To the extent that funds are appropriated in a subsequent fiscal year, former MSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Contractor provided the MSP vessel remains eligible.

(h) *Release of Vessels from Obligations:* If an MSP Operating Agreement is terminated by the Contractor, with available replacement under paragraph (f) of this section, or if sufficient funds are not appropriated for payments under an MSP Operating Agreement for any fiscal year by the 60th day of that fiscal year, then—

(1) Each vessel covered by the terminated MSP Operating Agreement is released from any further obligation under the MSP Operating Agreement;

(2) The owner and operator of a non-tank vessel or a tank vessel not built under the NDTVCP may transfer and register the applicable vessel under a foreign registry deemed acceptable by the Secretary and the SecDef, notwithstanding section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) and 46 CFR part 221;

(3) The owner and operator of a tank vessel built under the NDTVCP must formally apply to MARAD pursuant to section 9 of the Shipping Act, 1916 to transfer and register the vessel under a foreign registry; and

(4) If section 902 of the Act is applicable to a vessel that has been transferred to a foreign registry due to a terminated MSP Operating Agreement, then that vessel is available to be requisitioned by the Secretary pursuant to section 902 of the Act.

(5) Paragraph (h) of this section is not applicable to vessels under MSP Operating Agreements that have been terminated for any other reason.

(i) *Foreign Transfer of Vessel.* A Contractor may transfer a non-tank vessel to a foreign registry, without approval of the Secretary, if the Secretary, in conjunction with the SecDef, determines that the contractor will provide a replacement vessel:

(1) Of equal or greater military capability or of a capacity that is equivalent or greater as measured in deadweight tons, gross tons, or container equivalent units, as appropriate;

(2) That is a documented vessel under 46 U.S.C. chapter 121 by the owner of the vessel to be placed under a foreign registry; and

(3) That is not more than 10 years of age on the date of that documentation.

(j) *Transfer of MSP Operating Agreements.* A Contractor subject to an MSP Operating Agreement may transfer that MSP Operating Agreement (including all rights and obligations under that MSP Operating Agreement) to any person eligible to enter into an MSP Operating Agreement under § 296.10 and of the same or more restrictive U.S. citizen priority, provided that prior approval to transfer the MSP Operating Agreement is granted by the Secretary and the SecDef. The Contractor should allow at least 90 days for processing of a transfer request.

§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 10 years, starting on October 1, 2005, and ending on September 30, 2015, but payments to Contractors are subject to annual appropriations each fiscal year. MARAD may enter into MSP Operating Agreements for a period less than the full term authorized under the MSA 2003.

(b) *Terms under a Continuing Resolution (CR).* In the event funds are available under a CR, the terms and conditions of the MSP Operating Agreements shall be in force provided sufficient funds are available to fully meet obligations under MSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated under a CR at sufficient levels for any portion of a fiscal year, the Secretary will select the vessels to retain within the funding level of the previous fiscal year, in consultation with the SecDef, based on the Secretaries' determination of the most militarily useful and commercially viable vessels. With regard to an MSP Operating Agreement that does not receive funds, the terms and conditions of any applicable MSP Operating Agreement may be voided and the Contractor may request termination of the MSP Operating Agreement.

(c) *National security requirements.* Each MSP Operating Agreement shall require the owner or operator of an Eligible Vessel included in that MSP Operating Agreement to enter into an EPA pursuant to section 53107 of the MSA 2003. The EPA shall be a document incorporating the terms of the Voluntary Intermodal Sealift Agreement (VISA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

(d) *Vessel operating agreements.* The MSP Operating Agreement shall require that during the period an Eligible Vessel is included in that MSP Operating Agreement, the Eligible Vessel shall:

(1) *Documentation:* Be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121;

(2) *Operation:* Be operated exclusively in the foreign commerce, except for tankers, which may be operated in foreign-to-foreign commerce, and shall not otherwise be operated in the coastwise trade of the United States; and

(3) *Noncontiguous Domestic Trade:* Not receive MSP payments during a period in which the Contractor participates, *i.e.*, directly or indirectly owns, charters, or operates, a vessel engaged in noncontiguous domestic trade unless the Contractor is a Section 2 Citizen.

(e) *Obligation of the U.S. Government.* The amounts payable as MSP payments under an MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

(f) *U.S. Merchant Marine Academy cadets.* The MSP Operator shall agree to carry on the MSP vessel two U.S. Merchant Marine Academy cadets, if available, on each voyage.

§ 296.32 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial and Rate Approvals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

(a) *Form MA–172:* Not later than 120 days after the close of the Contractor's semiannual accounting period, a Form MA–172 on a semiannual basis, in accordance with 46 CFR 232.6; or

(b) *Financial Statement:* Not later than 120 days after the close of the Contractor's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its EPA, or if not current year data, a Schedule 310 of the MA–172.

(Approved by the Office of Management and Budget under Control Number 2133–0005.)

Subpart E—Billing and Payment Procedures

§ 296.40 Billing procedures.

Submission of voucher. For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its MSP Operating Agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 296.31(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 296.41(b) and (c). All submissions shall be forwarded to the Director, Office of Accounting, MAR–330, Room 7325, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

§ 296.41 Payment procedures.

(a) *Amount payable.* An MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the MSP Operating Agreement is in effect,

for each Agreement Vessel, an annual payment equal to $2,600,000 for FY 2006, FY 2007, FY 2008; $2,900,000 for FY 2009, FY 2010, FY 2011; and $3,100,000 for FY 2012, FY 2013, FY 2014, FY 2015. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable.* (1) The annual amount otherwise payable under an MSP Operating Agreement shall be reduced on a pro rata basis for each day less than 320 in a fiscal year that an Agreement Vessel:

(i) Is not operated exclusively in the foreign commerce, except for tank vessels, which may be operated in foreign-to-foreign commerce;

(ii) Is operated in the coastwise trade; or

(iii) Is not documented under 46 U.S.C. chapter 121.

(2) To the extent that a Contractor operates MSP vessels less than 320 days under the provisions of § 296.31(d), payments will be reduced for each day less than 320 days.

(c) *No payment.* (1) Regardless of whether the Contractor has or will operate for 320 days in a fiscal year, a Contractor shall not be paid:

(i) For any day that an Agreement Vessel is engaged in transporting more than 7,500 tons (using the U.S. English standard of short tons, which converts to 6,696.75 long tons, or 6,803.85 metric tons) of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Act, provided that it is bulk cargo;

(ii) During a period in which the Contractor participates in noncontiguous domestic trade, unless that Contractor is a Section 2 Citizen;

(iii) While under charter to the United States Government other than a charter pursuant to an EPA under § 53107 of the MSA 2003. A voyage charter that is essentially a contract of affreightment will not be considered to be a charter;

(iv) For a vessel in excess of 25 years of age, except for a LASH vessel in excess of 30 years of age or a tank vessel which is limited to 20 years of age, unless the vessel is a Participating Fleet Vessel meeting the requirements of § 296.21(e);

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey, inspection, or repair unless prior to the expiration of the vessel's 30-day period, approval is obtained from MARAD for an extension beyond 30 days. Drydocking, survey, inspection, or repair periods of 30 days or less are considered operating days; and

(vi) If the contracted vessel is not operated or maintained in accordance with the terms of the MSP Operating Agreement.

(2) To the extent that non-payment days under paragraph (c) of this section are known, Contractor payments shall be reduced at the time of the current billing. The daily reduction amounts shall be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent. Daily reduction amounts shall be applied.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 296.31(d) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period shall be electronically transferred using MARAD's prescribed format, or a check may be forwarded to the Maritime Administration, P.O. Box 845133, Dallas, Texas 75284–5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

Subpart F—Appeals Procedures

§ 296.50 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Maritime Administration or the Contracting Officer with respect to the administration of this part or any other dispute or complaint concerning MSP Operating Agreements may submit an appeal to the Administrator. Such appeals shall be made in writing to the Secretary, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Attn.: MSP Operating Agreement Appeals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Such an appeal is a prerequisite to exhausting administrative remedies.

(b) *DOD determinations.* The MSA 2003 assigns joint and separate roles and responsibilities to the Secretary and to the SecDef. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement the MSA 2003. A Contractor who disagrees with the initial findings, interpretations or decisions regarding the implementation of the MSA 2003—whether joint or separate in nature—shall communicate such disagreement to the Contracting Officer. Any disagreement or dispute of a Contractor may, where appropriate, be transferred to the Director, Policy and Plans, U.S. Transportation Command (Director), for resolution. A Contractor who disagrees with the findings, interpretations, or decisions of the Director, with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal shall be made in writing to the Commander within 60 days following the date of the document notifying the Contractor of the administrative determination of the Director. Such an appeal should be addressed to the Commander, U.S. Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225–5357.

(c) *Process.* The Administrator, or the Commander in the case of a DOD determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Administrator, or the Commander in the case of a DOD determination, shall be final.

Subpart G—Maintenance and Repair Reimbursement Pilot Program

§ 296.60 Applications.

Section 3517, Subtitle A of Title XXXV establishes a five-year pilot program for MSP vessels to perform maintenance and repair (M&R) work in United States shipyards.

(a) The M&R pilot program is authorized at $19.5 million per year for FYs 2006–2011.

(b) The M&R pilot program is a voluntary program and MSP operators are not required to participate.

(c) Subject to available funding, expenses are reimbursable at 80 percent of the difference between the fair and reasonable costs of the repairs in a foreign shipyard in the geographic region in which the MSP vessel operates and the fair and reasonable costs of performing the repairs in a United States shipyard.

(1) An MSP operator must apply at least 180 days in advance of anticipated M&R work.

(2) The application must include estimates of M&R costs in the United States and outside the United States in the geographic region in which the MSP vessel operates.

(d) MARAD has 60 days to notify the M&R applicant if the repair work meets the requirements of the M&R pilot program, if there is a shipyard in the

United States that can perform the approved repairs, and whether funds are available.

(e) Qualified M&R work includes any required inspection and any M&R work determined in the course of an inspection that is necessary to comply with the laws of the United States.

(f) Qualified M&R work does not include routine M&R or emergency M&R that is necessary to enable a vessel to return to a port in the United States.

By order of the Maritime Administrator.

Dated: September 15, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–18678 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–81–P

Proposed Rules

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22503; Directorate Identifier 2005–NM–062–AD]

RIN 2120–AA64

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

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain McDonnell Douglas transport category airplanes. This proposed AD would require an initial ultrasonic inspection for cracks of the studbolts of the inboard and outboard hinge fittings of the left and right outboard flaps of the wings. Based on the inspection results, this proposed AD would also require doing repetitive ultrasonic inspections, replacing upper and/or lower studbolts with new or serviceable studbolts, doing a detailed inspection for corrosion of the upper studbolts, doing a magnetic particle inspection for cracks of studbolts, and changing the protection treatment; as applicable. This proposed AD is prompted by reports of corrosion and failures of the upper and lower studbolts of the outboard flaps inboard and outboard hinge fittings. We are proposing this AD to prevent corrosion and subsequent cracking of studbolts, which could result in failure of the flap hinge fittings and their possible separation from the wing rear spar, and consequent reduced controllability 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.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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–2005–22503; the directorate identifier for this docket is 2005–NM–062–AD.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

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–2005–22503; Directorate Identifier 2005–NM–062–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that 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 DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

We have received several reports of corrosion and failures of the upper and lower studbolts of the outboard flaps inboard and outboard hinge fittings on certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes. We have also received several reports of corrosion of the upper studbolts of the outboard flaps inboard and outboard hinge fittings on certain McDonnell Douglas Model MD–11 and –11F airplanes. (The lower studbolts installed on Model MD–11 and –11F airplanes during production are made of corrosion-resistant material and are not subject to the identified unsafe condition.)

Investigation has shown that the failures are caused by stress corrosion starting at corrosion pits. Corrosion and subsequent cracking of the studbolts, if

not detected and corrected, could result in failure and possible separation of the flap hinge fittings from the wing rear spar, and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed the service bulletins in the following table:

REFERENCED SERVICE BULLETINS

Model—	Boeing service bulletin—
DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F and MD–10–30F airplanes.	DC10–57–154, dated February 2, 2005.
MD–11 and MD–11F airplanes	MD11–57–076, dated February 2, 2005.

The service bulletins describe procedures for an initial ultrasonic inspection for cracks of the upper and lower studbolts (upper only for MD–11 and –11F airplanes) of the inboard and outboard hinge fittings of the left and right outboard flaps of the wings. Based on the inspection results, the service bulletins describe the procedures in the following two tables:

CONDITION 1.—(NO CRACKED STUDBOLTS)

Option	Description
1	Repetitive ultrasonic inspections (described previously).
2	Replacement of the upper and lower studbolts (as applicable) with new or serviceable studbolts. Replacing studbolts with studbolts that have increased corrosion protection ends the repetitive inspections.
3	Removal of upper and lower studbolts (as applicable), a visual inspection for corrosion of the studbolts, a magnetic particle inspection for cracks of studbolts if necessary, contact Boeing for protection treatment procedures if necessary, and installation of new or serviceable studbolts.

CONDITION 2.—(CRACKED STUDBOLTS)

Option	Description
1	Removal of upper and lower studbolts (as applicable), a visual inspection for corrosion of studbolts, a magnetic particle inspection for cracks of studbolts if necessary, installation of new or serviceable studbolts, and repetitive ultrasonic inspections (described previously) if necessary. Replacing studbolts with studbolts that have increased corrosion protection ends the repetitive inspections.
2	Replacement of the upper and lower studbolts (as applicable) with new or serviceable studbolts.
3	Removal of upper and lower studbolts (as applicable), a detailed inspection for corrosion of the studbolts, a magnetic particle inspection for cracks of studbolts if necessary, and installation of new or serviceable studbolts.

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. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Bulletins.''

Differences Between the Proposed AD and Service Bulletins

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions according to a method approved by the FAA.

The service bulletins refer only to a ''visual inspection'' for corrosion of studbolts. We have determined that the procedures in the service bulletins should be described as a ''detailed inspection.'' Note 1 has been included in this proposed AD to define this type of inspection.

Costs of Compliance

There are about 594 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 297 U.S.-registered Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; and 69 Model MD–11 and –11F airplanes.

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Initial ultrasonic inspection	16	$65	None	$1,040	366	$380,640

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2005–22503; Directorate Identifier 2005–NM–062–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 7, 2005.

Affected ADs

(b) None.

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

TABLE 1.—APPLICABILITY

Model—	As identified in—
(1) DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F (KC–10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F and MD–10–30F airplanes.	Boeing Service Bulletin DC10–57–154, dated February 2, 2005
(2) MD–11 and MD–11F airplanes	Boeing Service Bulletin MD11–57–076, dated February 2, 2005

Unsafe Condition

(d) This AD was prompted by reports of corrosion and failures of the upper and lower studbolts of the outboard flaps inboard and outboard hinge fittings. We are issuing this AD to prevent corrosion and subsequent cracking of studbolts, which could result in failure of the flap hinge fittings and their possible separation from the wing rear spar, 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.

Service Bulletins

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

Ultrasonic Inspection

(g) Do an ultrasonic inspection for cracks of the upper and lower studbolts (upper studbolts only for Model MD–11 and –11F airplanes) of the inboard and outboard hinge fittings of the left and right outboard flaps of the wings, in accordance with the service bulletin. Inspect within 72 months from the time the studbolts were last replaced, or within 24 months after the effective date of this AD, whichever occurs later.

Condition 1: No Cracked Studbolts

(h) If no cracked upper or lower studbolt is detected during any ultrasonic inspection required by paragraph (g) of this AD, do the actions specified in paragraph (i), (j), or (k) of this AD.

Condition 1, Option 1: Repetitive Inspections

(i) Repeat the ultrasonic inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 24 months, until the action in paragraph (j)(1), (j)(2), (k)(1), or (k)(2)(i) of this AD is done.

Condition 1, Option 2: Replacement

(j) Within 72 months from the time the studbolts were last replaced, or within 24 months after the effective date of this AD, whichever occurs later, do any one of the replacements in Table 2 of this AD. Thereafter, at the times specified in Table 2, repeat the ultrasonic inspection required by paragraph (g) of this AD (if applicable).

TABLE 2.—REPLACEMENT PARTS

Replace the upper and lower studbolts (as applicable) of the inboard and outboard hinge fitting with—	And repeat the ultrasonic inspection required by paragraph (g) of this AD thereafter—	Accomplishing this replacement terminates—
(1) New studbolts that have increased corrosion protection in accordance with the service bulletin.	None	The repetitive inspection requirements of paragraph (i), (j)(3), and (j)(4) of this AD.

TABLE 2.—REPLACEMENT PARTS—Continued

Replace the upper and lower studbolts (as applicable) of the inboard and outboard hinge fitting with—	And repeat the ultrasonic inspection required by paragraph (g) of this AD thereafter—	Accomplishing this replacement terminates—
(2) Studbolts changed with protective treatment in accordance with a method approved by the Manager, Los Angeles Aircraft Certification (ACO), FAA.	None	The repetitive inspection requirements of paragraph (i), (j)(3), and (j)(4) of this AD.
(3) Equivalent studbolts in accordance with the service bulletin.	At intervals not to exceed 24 months.	None.
(4) Kept serviceable studbolts wet with sealant	At intervals not to exceed 24 months.	None.

Condition 1, Option 3: Removal, Inspection(s), and Corrective Actions

(k) Within 72 months from the time the studbolts were last replaced, or within 24 months after the effective date of this AD, whichever occurs later, remove the upper and lower studbolts (as applicable) of the inboard and outboard hinge fittings, and do a detailed inspection for corrosion of the upper and lower studbolts (as applicable), in accordance with the service bulletin.

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

(1) If no corroded studbolt is found, before further flight, change the protective treatment of all upper and lower studbolts (as applicable) to give increased corrosion protection in accordance with a method approved by the Manager, Los Angeles ACO, FAA. Accomplishing this change ends the repetitive inspection requirements of paragraph (i) of this AD.

(2) If any corroded studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, thereafter do the repetitive inspections (if applicable) in accordance with Table 2 of this AD, and do a magnetic particle inspection for cracks in any remaining studbolt in accordance with the service bulletin.

(i) If no cracked studbolt is found, before further flight, change the protective treatment of all remaining studbolts to give increased corrosion protection in accordance with a method approved by the Manager, Los Angeles ACO, FAA. Accomplishing this change ends the repetitive inspection requirements of paragraph (i) of this AD.

(ii) If any cracked studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, and thereafter do the repetitive inspections (if applicable) in accordance with Table 2 of this AD.

Condition 2: Cracked Studbolts

(l) If any cracked studbolt is detected during any ultrasonic inspection required by paragraph (g) of this AD, before further fight, do the actions specified in paragraph (m), (n), or (o) of this AD.

Condition 2, Option 1: Removal, Inspection(s), and Corrective Actions

(m) Remove any cracked upper and lower studbolt (as applicable) of the inboard and outboard hinge fittings, install any studbolt identified in and in accordance with Table 2 of this AD, do the repetitive inspections (if applicable) in accordance with Table 2 of this AD, and do a detailed inspection for corrosion of any remaining studbolts in accordance with the service bulletin.

(1) If no corroded studbolt is found, before further flight, do a magnetic particle inspection for cracks in any remaining studbolt in accordance with the service bulletin. If any crack is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD and do the repetitive inspections (if applicable) in accordance with Table 2 of this AD.

(2) If any corroded studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, do the repetitive inspections (if applicable) in accordance with Table 2 of this AD, and do a magnetic particle inspection for cracks in any remaining studbolt in accordance with the service bulletin.

(i) If no cracked studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, and do the repetitive inspections (if applicable) in accordance with Table 2 of this AD.

(ii) If any cracked studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, and do the repetitive inspections (if applicable) in accordance with Table 2 of this AD.

Condition 2, Option 2: Replacement

(n) Replace all studbolts in accordance with paragraph (j) of this AD.

Condition 2, Option 3: Removal, Inspections, and Installation

(o) Remove any cracked studbolt, install any studbolt identified in and in accordance with Table 2 of this AD, do the repetitive inspections (if applicable) in accordance with Table 2 of this AD, and do a detailed inspection for corrosion of any remaining studbolt in accordance with the service bulletin.

(1) If no corroded studbolt is found, before further flight, do a magnetic particle inspection for cracks in any remaining studbolt in accordance with the service bulletin, and change the protective treatment of all remaining upper and lower studbolts (as applicable) to give increased corrosion protection in accordance with a method approved by the Manager, Los Angeles ACO, FAA. Accomplishing this change ends the repetitive inspection requirements of paragraph (i) of this AD.

(2) If any corroded studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, do the repetitive inspections (if applicable) in accordance with Table 2 of this AD, and do a magnetic particle inspection for cracks in any remaining studbolt in accordance with the service bulletin.

(i) If no cracked studbolt is found, before further flight, change the protective treatment of all remaining studbolts to give increased corrosion protection in accordance with a method approved by the Manager, Los Angeles ACO, FAA. Accomplishing this change ends the repetitive inspection requirements of paragraph (i) of this AD.

(ii) If any cracked studbolt is found, before further flight, install any studbolt identified in and in accordance with Table 2 of this AD, and do the repetitive inspections (if applicable) in accordance with Table 2 of this AD.

Alternative Methods of Compliance (AMOCs)

(p) The Manager, Los Angeles ACO, 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 15, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18907 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22505; Directorate Identifier 2003–NM–283–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CC Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CASA Model C–212–CC series airplanes. This proposed AD would restrict the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo. This proposed AD is prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are proposing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

DATES: We must receive comments on this proposed AD by October 24, 2005.

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

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

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.

FOR FURTHER INFORMATION CONTACT: *Technical information:* Della Swartz, Aerospace Engineer, ACE–115N, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, Unit 14, Room 128, Anchorage, Alaska 99513; telephone (907) 271–2672; fax (907) 271–6365.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

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–2005–22505; Directorate Identifier 2003–NM–283–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

The FAA has determined that an unsafe condition may exist on certain CASA Model C–212–CC series airplanes. The affected airplanes have been modified in accordance with a supplemental type certificate (STC) that involves removing some passenger seating and installing a cargo compartment with a net restraint system in place of the removed seats. The cargo compartment was certified as a class A compartment, although it is too large and remotely located from a crew member station as required by Section 25.855 (''Cargo or baggage compartments'') of the Federal Aviation Regulations (14 CFR 25.855), more specifically under 14 CFR 25.857(a), and described on page 105 of Advisory Circular (AC) 25–22, dated March 14, 2000. We have learned that it is possible these airplanes are being operated as ''combi'' airplanes (*i.e.*, carrying both passengers and cargo on the main deck). The main deck cargo compartment of a combi airplane should be certified to meet the requirements of a class B compartment as provided in 14 CFR 25.857(b) and the general requirements of 14 CFR 25.855. The affected airplanes, as modified by the STC, lack an essential feature of a class B cargo compartment: The ability to prevent a hazardous quantity of smoke, flames, and/or extinguishing agent from entering a compartment occupied by passengers or crew. That is, the cargo compartments on the affected airplanes, when operated in a combi configuration, must include a protective liner to contain any smoke, flames, or released extinguishing agent within the cargo compartment itself. As currently configured on these airplanes, the cargo compartments are separated from the passengers and crew by only a cargo net.

Therefore, we have determined that affected airplanes in the current STC-modified configuration, when carrying both cargo and passengers in the same compartment, cannot achieve the level of performance required by 14 CFR 25.855. This could result in an inability to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from entering a compartment occupied by passengers or crew.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Spain 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). We have reviewed all available information and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would restrict the operation of the affected airplanes to carrying either passengers or cargo, but not both, in the same compartment. However, the proposed AD would allow ''combi'' operation of airplanes that receive an FAA-approved modification that will provide appropriate means (*i.e.*, a protective liner in the form of a barrier, a smoke curtain, or a hard wall with a door) to ensure that smoke, flames, and fire extinguishing agent do not enter a compartment occupied by passengers or crew. The requirements of this proposed AD are intended to ensure operation of the affected airplanes in compliance with the specifications of 14 CFR 25.855. Because associated systems such as smoke detection may be affected by the installation of a smoke barrier, approval of the proposed modification is contingent on the systems' compliance with 14 CFR 25.855.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, we have fully considered the effects of this proposed AD (including costs to be borne by affected operators) from the earliest possible stages of AD development. This proposed AD is based on those considerations, and was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this proposed AD. In any event, the Federal Aviation Regulations require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. We have determined in this case that the proposed requirements are necessary and the indirect costs would be outweighed by the safety benefits of the proposed AD.

Exemption Granted

On May 16, 2003, an operator of certain CASA Model C–212–CC and –CD series airplanes (not affected by this proposed AD) in Alaska was granted Exemption 7779A to provide an acceptable level of fire protection that will allow those airplanes to be operated in the combi configuration. (Documents related to the exemption may be viewed at *http://dms.dot.gov,* under docket number FAA–2001–11150.) The exemption was granted based on public interest, with the following limitations:

1. A means will be provided to extinguish or control a fire without requiring a crewmember to enter the compartment. Fire containment covers (FCCs) of woven fiberglass-based materials that will pass the oil burner test of FAR Part 25, Appendix F, Part II, must be used. FCCs will completely surround all cargo, including being underneath the cargo, except for obviously non-flammable items, such as metal stock, machinery, and non-flammable fluids without flammable packaging. Cargo restraint nets will be installed over the FCCs. A valve will be installed in the FCCs to allow fire-fighting attempts without removing or loosening the FCCs.

2. A means will be provided to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers. There is an approved procedure for elimination of smoke and fumes in the airplane flight manual (AFM).

3. A separate approved smoke detector or fire detector system will be installed in the cargo area and a fire/smoke warning indicator will be provided in the cockpit. Smoke or fire detectors placed within each FCC fully enclosed volume provide such a means. The use of non-TSO'd inexpensive building-type smoke detectors is permitted. Detectors may be wired or wireless, as long as they incorporate provisions for sensor redundancy, testing, and remote cockpit indication. At least two detectors must be placed within each FCC fully enclosed volume.

4. Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

5. Two additional fire extinguishers must be carried on the airplane.

6. Limitations 1 through 5 must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

We anticipate that adherence to these six terms and conditions, in a method approved by the FAA, would be considered a means of compliance with this proposed AD.

Costs of Compliance

We estimate that 5 airplanes of U.S. registry would be affected by this proposed AD. We recognize that the proposed operational restrictions may impose indirect and adverse economic effects on operators from a potential loss of revenue. Those indirect costs are difficult to calculate because the lost revenue from combi-operated flights is not readily measurable. Nevertheless, because of the severity of the identified unsafe condition, we have determined that continued operational safety necessitates these costs to the operators.

An operator may choose to modify the cargo compartment rather than restrict its operations. However, since a modification commensurate with the requirements of this proposed AD has not been developed, we cannot provide specific information regarding the number of work hours or the cost of parts to accomplish that modification. Further, modification costs would likely vary, depending on the airplane configuration. The proposed compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification, and also ensure the necessary level of flight safety. Based on a similar modification accomplished previously, we can reasonably estimate that the proposed modification may take 40 work hours, at an average labor rate of $65 per work hour. The cost of required parts would be about $1,800 per airplane. A required proof of function flight would cost about $4,000 including the services of a Designated Engineering Representative, pilot, test airplane, and test equipment. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be about $8,400 per airplane.

As indicated previously, we specifically invite comments and other data regarding the economic aspect of the proposed AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket No. FAA–2005–22505; Directorate Identifier 2003–NM–283–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 24, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Model C–212–CC series airplanes, certificated in any category, modified in accordance with Supplemental Type Certificate (STC) ST02129AK, or by field approval using STC ST02129AK as a basis for the field approval.

Unsafe Condition

(d) This AD was prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by 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.

Modification

(f) As of 12 months after the effective date of this AD, no person may operate an airplane in the combi configuration, unless the actions specified by either paragraph (f)(1) or (f)(2) are done in accordance with a method approved by the Manager, Anchorage Aircraft Certification Office (ACO), FAA.

(1) Modify the airplane to incorporate a protective liner between the passengers and the cargo and to ensure compliance with section 25.855 (''Cargo or baggage compartment'') of the Federal Aviation Regulations (14 CFR 25.855).

(2) Comply with the terms and conditions specified in paragraphs (f)(2)(i) through (f)(2)(vi) of this AD.

(i) There are means to extinguish or control a fire without requiring a crewmember to enter the compartment.

(ii) There are means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers.

(iii) There is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station.

(iv) Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

(v) Two additional fire extinguishers must be carried on the airplane.

(vi) Limitations (f)(2)(i) through (f)(2)(v) must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided no passengers are onboard.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Anchorage 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 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18906 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22504; Directorate Identifier 2003–NM–281–AD]

RIN 2120–AA64

Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C–212–CC Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain CASA Model C–212–CC series airplanes. This proposed AD would restrict the operation of the airplane to carrying either passengers or cargo (but not both) in the same compartment, unless the airplane is modified to include an approved protective liner between the passengers and the cargo. This proposed AD is prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are proposing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by passengers or crew.

DATES: We must receive comments on this proposed AD by October 24, 2005.

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

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

- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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.

FOR FURTHER INFORMATION CONTACT:

Technical information: Della Swartz, Aerospace Engineer, ACE–115N, FAA, Anchorage Aircraft Certification Office, 222 West 7th Avenue, Unit 14, Room 128, Anchorage, Alaska 99513; telephone (907) 271–2672; fax (907) 271–6365.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

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–2005–22504; Directorate Identifier 2003–NM–281–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

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

Discussion

The FAA has determined that an unsafe condition may exist on certain CASA Model C–212–CC series airplanes. The affected airplanes have been modified in accordance with a supplemental type certificate (STC) that involves removing some passenger seating and installing a cargo compartment with a net restraint system in place of the removed seats. The cargo compartment was certified as a class A compartment, although it is too large and remotely located from a crew member station as required by Section 25.855 (''Cargo or baggage compartments'') of the Federal Aviation Regulations (14 CFR 25.855), more specifically under 14 CFR 25.857(a), and described on page 105 of Advisory Circular (AC) 25–22, dated March 14, 2000. We have learned that it is possible these airplanes are being operated as ''combi'' airplanes (i.e., carrying both passengers and cargo on the main deck). The main deck cargo compartment of a combi airplane should be certified to meet the requirements of a class B compartment as provided in 14 CFR 25.857(b) and the general requirements of 14 CFR 25.855. The affected airplanes, as modified by the STC, lack an essential feature of a class B cargo compartment: the ability to prevent a hazardous quantity of smoke, flames, and/or extinguishing agent from entering a compartment occupied by passengers or crew. That is, the cargo compartments on the affected airplanes, when operated in a combi configuration, must include a protective liner to contain any smoke, flames, or released extinguishing agent within the cargo compartment itself. As currently configured on these airplanes, the cargo compartments are separated from the passengers and crew by only a cargo net.

Therefore, we have determined that affected airplanes in the current STC-modified configuration, when carrying both cargo and passengers in the same compartment, cannot achieve the level of performance required by 14 CFR 25.855. This could result in an inability to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from entering a compartment occupied by passengers or crew.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Spain 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). We have reviewed all available information and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would restrict the operation of the affected airplanes to carrying either passengers or cargo, but not both, in the same compartment. However, the proposed AD would allow ''combi'' operation of airplanes that receive an FAA-approved modification that will provide appropriate means (i.e., a protective liner in the form of a barrier, a smoke curtain, or a hard wall with a door) to ensure that smoke, flames, and fire extinguishing agent do not enter a compartment occupied by passengers or crew. The requirements of this proposed AD are intended to ensure operation of the affected airplanes in compliance with the specifications of 14 CFR 25.855. Because associated systems such as smoke detection may be affected by the installation of a smoke barrier, approval of the proposed modification is contingent on the systems' compliance with 14 CFR 25.855.

Impact on Intrastate Aviation in Alaska

In light of the heavy reliance on aviation for intrastate transportation in Alaska, we have fully considered the effects of this proposed AD (including costs to be borne by affected operators) from the earliest possible stages of AD development. This proposed AD is based on those considerations, and was developed with regard to minimizing the economic impact on operators to the extent possible, consistent with the safety objectives of this proposed AD. In any event, the Federal Aviation Regulations require operators to correct an unsafe condition identified on an airplane to ensure operation of that airplane in an airworthy condition. We have determined in this case that the proposed requirements are necessary and the indirect costs would be outweighed by the safety benefits of the proposed AD.

Exemption Granted

On May 16, 2003, an operator of certain CASA Model C–212–CC and –CD series airplanes (not affected by this proposed AD) in Alaska was granted Exemption 7779A to provide an acceptable level of fire protection that will allow those airplanes to be operated in the combi configuration. (Documents related to the exemption may be viewed at *http://dms.dot.gov,* under docket number FAA–2001–11150.) The exemption was granted based on public interest, with the following limitations:

1. A means will be provided to extinguish or control a fire without requiring a crewmember to enter the compartment. Fire containment covers (FCCs) of woven fiberglass-based materials that will pass the oil burner test of FAR Part 25, Appendix F, Part II, must be used. FCCs will completely surround all cargo, including being underneath the cargo, except for obviously non-flammable items, such as metal stock, machinery, and non-flammable fluids without flammable packaging. Cargo restraint nets will be installed over the FCCs. A valve will be installed in the FCCs to allow fire-fighting attempts without removing or loosening the FCCs.

2. A means will be provided to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers. There is an approved procedure for elimination of smoke and fumes in the airplane flight manual (AFM).

3. A separate approved smoke detector or fire detector system will be installed in the cargo area and a fire/smoke warning indicator will be provided in the cockpit. Smoke or fire detectors placed within each FCC fully enclosed volume provide such a means. The use of non-TSO'd inexpensive building-type smoke detectors is permitted. Detectors may be wired or wireless, as long as they incorporate provisions for sensor redundancy, testing, and remote cockpit indication. At least two detectors must be placed within each FCC fully enclosed volume.

4. Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

5. Two additional fire extinguishers must be carried on the airplane.

6. Limitations 1 through 5 must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

We anticipate that adherence to these six terms and conditions, in a method approved by the FAA, would be considered a means of compliance with this proposed AD.

Costs of Compliance

We estimate that 5 airplanes of U.S. registry would be affected by this proposed AD. We recognize that the proposed operational restrictions may impose indirect and adverse economic effects on operators from a potential loss of revenue. Those indirect costs are difficult to calculate because the lost revenue from combi-operated flights is not readily measurable. Nevertheless, because of the severity of the identified unsafe condition, we have determined that continued operational safety necessitates these costs to the operators.

An operator may choose to modify the cargo compartment rather than restrict its operations. However, since a modification commensurate with the requirements of this proposed AD has not been developed, we cannot provide specific information regarding the number of work hours or the cost of parts to accomplish that modification. Further, modification costs would likely vary, depending on the airplane configuration. The proposed compliance time of 12 months should provide ample time for the development, approval, and installation of an appropriate modification, and also ensure the necessary level of flight safety. Based on a similar modification accomplished previously, we can reasonably estimate that the proposed modification may take 40 work hours, at an average labor rate of $65 per work hour. The cost of required parts would be about $1,800 per airplane. A required proof of function flight test would cost about $4,000 including the services of a Designated Engineering Representative, pilot, test airplane, and test equipment. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be about $8,400 per airplane.

As indicated previously, we specifically invite comments and other data regarding the economic aspect of the proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Construcciones Aeronauticas, S.A. (CASA): Docket No. FAA–2005–22504; Directorate Identifier 2003–NM–281–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 24, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model C–212–CC series airplanes, certificated in any category, modified in accordance with Supplemental Type Certificate (STC) ST02177AK, or by field approval using STC ST02177AK as a basis for the field approval.

Unsafe Condition

(d) This AD was prompted by our determination that affected airplanes, when carrying both cargo and passengers in the same compartment, cannot achieve the required level of performance. We are issuing this AD to prevent a hazardous quantity of smoke, flames, and/or fire extinguishing agent from the cargo compartment from entering a compartment occupied by 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.

Modification

(f) As of 12 months after the effective date of this AD, no person may operate an airplane in the combi configuration, unless the actions specified by either paragraph (f)(1) or (f)(2) are done in accordance with a method approved by the Manager, Anchorage Aircraft Certification Office (ACO), FAA.

(1) Modify the airplane to incorporate a protective liner between the passengers and the cargo and to ensure compliance with section 25.855 (''Cargo or baggage compartment'') of the Federal Aviation Regulations (14 CFR 25.855).

(2) Comply with the terms and conditions specified in paragraphs (f)(2)(i) through (f)(2)(vi) of this AD.

(i) There are means to extinguish or control a fire without requiring a crewmember to enter the compartment.

(ii) There are means to exclude hazardous quantities of smoke, flames, or extinguishing agent from any compartment occupied by the crew or passengers.

(iii) There is a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station.

(iv) Crew members must receive training in the use of the fire extinguishers and the cargo fire containment covers; they must also receive training in the use of the approved procedure for the elimination of smoke and fumes that is specified in the AFM.

(v) Two additional fire extinguishers must be carried on the airplane.

(vi) Limitations (f)(2)(i) through (f)(2)(v) must be documented as operating limitations in the limitations section of the Airplane Flight Manual Supplement.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided no passengers are onboard.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Anchorage 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 16, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–18908 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 05–007]

RIN 1625–AA87

Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish fixed security zones in the waters extending approximately 100 yards around six separate oil refinery piers in the San Francisco Bay area. These security zones are an integral part of the Coast Guard's efforts to protect these facilities and the surrounding areas from destruction or damage due to accidents, subversive acts, or other causes of a similar nature. The proposed security zones would prohibit all persons and vessels from entering, transiting through or anchoring within portions of the designated waters of San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay, unless authorized by the Captain of the Port (''COTP'') or his designated representative. These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, federal, state and local law enforcement assets.

DATES: Comments and related material must reach the Coast Guard on or before November 21, 2005.

ADDRESSES: You can mail comments and related material to the Waterways Safety Branch, U.S. Coast Guard Sector San Francisco, Coast Guard Island, Alameda, California 94501. The Waterways Safety Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Safety Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ian Callander, U.S. Coast Guard Sector San Francisco, at (510) 437–3401 or the Sector San Francisco Command Center, at (415) 399–3547.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP 05–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Safety Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing

regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

To address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against an oil facility pier would have on the public and the environment, we propose to establish security zones in the waters within approximately 100 yards of six oil refinery piers. These zones are necessary to protect the people, ports, waterways, and properties of San Francisco Bay, San Pablo Bay, Carquinez Strait, and Suisun Bay areas.

Discussion of Proposed Rule

The Coast Guard proposes to establish a separate fixed security zone around each of six oil refinery piers. The zones will encompass the waters extending from the surface to the sea floor, within an area approximately 100 yards around the selected oil refinery piers located within San Francisco Bay, California. The specific coordinates defining these zones are given in paragraph (a) of proposed 33 CFR 165.1197.

For the Chevron-Texaco oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Francisco Bay around the Chevron Long Wharf, located in Richmond, California.

For the Conoco-Phillips oil facility, the proposed security zone would extend approximately 100 yards into the waters of San Pablo Bay around the Conoco-Philips Wharf, located in Rodeo, California.

For the Shell Martinez oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Shell Terminal, located in Martinez, California.

For the Tesoro-Amorco oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Amorco Pier, located in Martinez, California.

For the Valero oil facility, the proposed security zone would extend approximately 100 yards into the waters of Carquinez Strait around the Valero Pier, located in Benicia, California.

For the Tesoro-Avon oil facility, the proposed security zone would extend approximately 100 yards into the waters of Suisun Bay around the Avon Pier, located in Martinez, California.

These zones will be subject to discretionary and random patrol and monitoring by Coast Guard, federal, state and local law enforcement assets.

In December 2002, the Coast Guard established permanent moving security zones around all tank vessels within San Francisco Bay to enhance security during their transit, mooring and anchorage (67 FR 79854, December 31, 2002). This proposed rule would extend this level of security to oil refinery piers by restricting access to the waters surrounding the piers. Each of these proposed security zones would provide a margin of safety for ongoing operations at the refinery piers.

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

Regulatory Evaluation

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed rule restricts access to the waters encompassed by the security zones, the effect of this proposed rule would not be significant because: (i) The zones would encompass only small portions of the waterways, (ii) vessels would be able to pass safely around the zones, and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the proposed zones are the minimum necessary to provide adequate protection for the oil refinery piers, vessels engaged in operations at the oil facility piers, their crews, other vessels operating in the vicinity, and the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: owners and operators of private vessels intending to fish or sightsee near the oil refinery piers.

The proposed security zones would not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic would be able to pass safely around the area, (ii) vessels engaged in recreational activities, sightseeing and commercial fishing would have ample space outside of the security zones to engage in these activities, and (iii) vessels may receive authorization to transit through the zones by the Captain of the Port or his designated representative on a case-by-case basis. In addition to publication in the **Federal Register**, small entities and the maritime public would be advised of these security zones via public notice to mariners.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ian Callander, Waterways Safety Branch, U.S. Coast Guard Sector San Francisco, at (510) 437–3701 or the Sector San Francisco Command Center, at (415) 399–3547.

Collection of Information

This proposed rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

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

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 § 165.1197, to read as follows:

§ 165.1197 Security Zones; San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, California.

(a) *Locations.* The following areas are security zones:

(1) *Chevron Long Wharf, San Francisco Bay*. This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Chevron Long Wharf, Richmond, CA, and encompasses all waters in San Francisco Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
37°55′52.2″ N	122°24′04.7″ W
37°55′41.8″ N	122°24′07.1″ W
37°55′26.8″ N	122°24′35.9″ W
37°55′47.1″ N	122°24′55.5″ W
37°55′42.9″ N	122°25′03.5″ W
37°55′11.2″ N	122°24′32.8″ W
37°55′14.4″ N	122°24′27.5″ W
37°55′19.7″ N	122°24′23.7″ W
37°55′22.2″ N	122°24′26.2″ W
37°55′38.5″ N	122°23′56.9″ W
37°55′47.8″ N	122°23′53.3″ W

and along the shoreline back to the beginning point.

(2) *Conoco-Phillips Wharf, San Pablo Bay.* This security zone includes all waters extending from the surface to the

sea floor within approximately 100 yards of the Conoco-Phillips Wharf, Rodeo, CA, and encompasses all waters in San Pablo Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
38°03′06.0″ N	122°15′32.4″ W
38°03′20.7″ N	122°15′35.8″ W
38°03′21.8″ N	122°15′29.8″ W
38°03′29.1″ N	122°15′31.8″ W
38°03′23.8″ N	122°15′55.8″ W
38°03′16.8″ N	122°15′53.2″ W
38°03′18.6″ N	122°15′45.2″ W
38°03′04.0″ N	122°15′42.0″ W

and along the shoreline back to the beginning point.

(3) *Shell Terminal, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Shell Terminal, Martinez, CA, and encompasses all waters in San Pablo Bay within a line connecting the following geographical position—

Latitude	*Longitude*
38°01′39.8″ N	122°07′40.3″ W
38°01′54.0″ N	122°07′43.0″ W
38°01′56.9″ N	122°07′37.9″ W
38°02′02.7″ N	122°07′42.6″ W
38°01′49.5″ N	122°08′08.7″ W
38°01′43.7″ N	122°08′04.2″ W
38°01′50.1″ N	122°07′50.5″ W
38°01′36.3″ N	122°07′47.6″ W

and along the shoreline back to the beginning point.

(4) *Amorco Pier, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Amorco Pier, Martinez, CA, and encompasses all waters in the Carquinez Strait within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′03.1″ N	122°07′11.9″ W
38°02′05.6″ N	122°07′18.9″ W
38°02′07.9″ N	122°07′14.9″ W
38°02′13.0″ N	122°07′19.4″ W
38°02′05.7″ N	122°07′35.9″ W
38°02′00.5″ N	122°07′31.1″ W
38°02′01.8″ N	122°07′27.3″ W
38°01′55.0″ N	122°07′11.0″ W

and along the shoreline back to the beginning point.

(5) *Valero Pier, Carquinez Strait.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Valero Pier, Benicia, CA, and encompasses all waters in the Carquinez Strait within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′37.6″ N	122°07′51.5″ W
38°02′34.7″ N	122°07′48.9″ W
38°02′44.1″ N	122°07′34.9″ W
38°02′48.0″ N	122°07′37.9″ W
38°02′47.7″ N	122°07′42.1″ W

and along the shoreline back to the beginning point.

(6) *Avon Pier, Suisun Bay.* This security zone includes all waters extending from the surface to the sea floor within approximately 100 yards of the Avon Pier, Martinez, CA, and encompasses all waters in Suisun Bay within a line connecting the following geographical positions—

Latitude	*Longitude*
38°02′24.6″ N	122°04′52.9″ W
38°02′54.0″ N	122°05′19.5″ W
38°02′55.8″ N	122°05′16.1″ W
38°03′02.1″ N	122°05′19.4″ W
38°02′55.1″ N	122°05′42.6″ W
38°02′48.8″ N	122°05′39.2″ W
38°02′52.4″ N	122°05′27.7″ W
38°02′46.5″ N	122°05′22.4″ W

and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33, entry into the security zones described in paragraph (a) of this section is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

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

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by federal, state and local law enforcement assets.

Dated: September 9, 2005.

W.J. Uberti,

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

[FR Doc. 05–18935 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IL–0002; FRL–7972–8]

Designation of Areas for Air Quality Planning Purposes; Illinois; Lyons Township PM–10 Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of Illinois' request to redesignate to attainment the Lyons Township (McCook) area currently designated as nonattainment of the National Ambient Air Quality Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). We are also proposing to approve the Lyons Township maintenance plan, submitted by the Illinois Environmental Protection Agency (IEPA) on August 2, 2005, as a revision to the PM–10 State Implementation Plan (SIP) for this area.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 24, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IL–0002 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/*.

RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket

identification number. Follow the online instructions for submitting comments.

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

Fax: (312) 886–5824.

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

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 AM to 4:30 PM excluding federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IL–0002. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your 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 instructions on submitting comments, go to Section I(B) of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
A. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?
III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

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

1. *Submitting CBI.* Do not submit CBI to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information 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:

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

b. 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.

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

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

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

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

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

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve the redesignation of the Lyons Township area to attainment of the PM–10 NAAQS. We are also proposing to approve the Lyons Township maintenance plan, submitted by the Illinois Environmental Protection Agency on August 2, 2005, as a revision to the PM–10 SIP for this area.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office.)

Dated: September 13, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–18956 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R05–OAR–2005–IL–0003; FRL–7973–3]

Designation of Areas for Air Quality Planning Purposes; IL; Lake Calumet PM–10 Redesignation and Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the State of Illinois' request to redesignate to attainment the Lake Calumet (Southeast Chicago) area currently designated as nonattainment of the National Ambient Air Quality

Standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). We are also proposing to approve the Lake Calumet maintenance plan, submitted by the Illinois Environmental Protection Agency (IEPA) on August 2, 2005, and as supplemented on September 8, 2005, as a revision to the PM–10 State Implementation Plan (SIP) for this area.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we do not receive any adverse comments in response to these direct final and proposed rules, we do not contemplate taking any further action in relation to this proposed rule. If EPA receives adverse comments, we will withdraw the direct final rule and will respond to all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 24, 2005.

ADDRESSES: Submit comments, identified by Regional Material in EDocket (RME) ID No. R05–OAR–2005–IL–0003 by one of the following methods:

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

Agency Web site: *http://docket.epa.gov/rmepub/*.

RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the online instructions for submitting comments.

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

Fax: (312) 886–5824.

Mail: You may send written comments to:

John M. Mooney, Chief, Criteria Pollutant Section, (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: John M. Mooney, Chief, Criteria Pollutant Section (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding federal holidays.

Instructions: Direct your comments to RME ID No. R05–OAR–2005–IL–0003. EPA's policy is that all comments received will be included in the public docket without change, 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your 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 instructions on submitting comments, go to Section I(B) of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in RME or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328 *panos.christos@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information
A. What Should I Consider as I Prepare My Comments for EPA?
II. What Action Is EPA Taking Today?
III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

I. General Information

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

1. *Submitting CBI.* Do not submit CBI to EPA through RME, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information 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:

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

b. 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.

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

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

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

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

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

h. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Taking Today?

EPA is proposing to approve the redesignation of the Lake Calumet area

to attainment of the PM–10 NAAQS. We are also proposing to approve the Lake Calumet maintenance plan, submitted by the Illinois Environmental Protection Agency on August 2, 2005, and as supplemented on September 8, 2005, as a revision to the PM–10 SIP for this area.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information, see the Direct Final Rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available electronically at RME or in hard copy at the above address. (Please telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office.)

Dated: September 12, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–18955 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–KY–0001–200521(b); FRL–7973–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Christian County, Kentucky Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 21, 2005, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted a request for parallel processing and on May 20, 2005, submitted a final request: To redesignate the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and for EPA approval of a Kentucky State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Christian County, Kentucky. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is comprised of two counties (*i.e.*, Christian County, Kentucky and Montgomery County, Tennessee). EPA is proposing to approve the 8-hour ozone redesignation request for the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for Christian County, Kentucky. This proposed approval is based on EPA's determination that the Commonwealth of Kentucky has demonstrated that Christian County, Kentucky has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On June 29, 2005, the State of Tennessee submitted a redesignation request and maintenance plan for the Montgomery, Tennessee portion of this area for EPA parallel processing. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emission budgets (MVEBs) for the years 2004 and 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Christian County, Kentucky. EPA is proposing to approve such MVEBs. In the Final Rules section of this **Federal Register**, EPA is taking action to approve the redesignation request and maintenance plan without prior proposal. A detailed rationale for the redesignation and other actions is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rulemaking will be withdrawn and public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received on or before October 24, 2005.

ADDRESSES: Comments may be mailed to Stacy DiFrank, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stacy DiFrank's telephone number is (404) 562–9042. Ms. Stacy DiFrank can also be reached via electronic mail at *difrank.stacy@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information on the approval of Kentucky's redesignation request and maintenance plan for the Christian County portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area, please see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: September 13, 2005.

A. Stanley Meiburg,

Acting, Regional Administrator, Region 4.

[FR Doc. 05–18960 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R04–OAR–2005–TN–0007–200527(b); FRL–7973–4]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Montgomery County, Tennessee Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On August 10, 2005, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a final request: To redesignate the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and to approve a Tennessee State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Montgomery County, Tennessee. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is comprised of two counties (i.e., Christian County, Kentucky and Montgomery County, Tennessee). EPA is approving the 8-hour ozone redesignation request for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. Additionally, EPA is approving the 8-hour ozone maintenance plan for Montgomery County, Tennessee. This approval is based on EPA's determination that the

State of Tennessee has demonstrated that Montgomery County, Tennessee has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On March 21, 2005, the Commonwealth of Kentucky submitted a redesignation request and maintenance plan for the Christian County, Kentucky portion of this area for EPA parallel processing. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Montgomery County, Tennessee. EPA is approving such MVEBs.

DATES: Written comments must be received on or before October 24, 2005.

ADDRESSES: Comments may be mailed to Anne Marie Hoffman of the Regulatory Development Section or Amanetta Wood of the Air Quality Modeling and Transportation Section at the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please follow the detailed instructions described in the direct final rule, **ADDRESSES** section which is published in the Rules Section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Anne Marie Hoffman may be reached by phone at (404) 562–9074 and via electronic mail at *hoffman.annemarie@epa.gov*. Amanetta Wood may be reached by phone at (404) 562–9025 and via electronic mail at *wood.amanetta@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information on the approval of Tennessee's redesignation request and maintenance plan for the Montgomery County portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area, please see the direct final rule which is published in the Final Rules section of this **Federal Register**.

Dated: September 13, 2005.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 05–18952 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No: 030602141–5241–24; I.D. 061505A]

RIN 0648–ZB55

Availability of Grants Funds for Fiscal Year 2006; Extension of Application Deadline

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: NOAA publishes this notice to extend the solicitation period on the Community-based Marine Debris Prevention and Removal Project Grants and the Research in Satellite Oceanography grant both of which were originally announced in the **Federal Register** on June 30, 2005. The solicitation periods for these programs were extended to provide the public more time to submit proposals.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to extend the solicitation period on the following initiatives originally announced in the **Federal Register** on June 30, 2005(70 FR 37766):

National Marine Fisheries Service

1. Community-based Marine Debris Prevention and Removal Project Grants (NMFS-HCPO–2006–2000351). NOAA extends the solicitation period from October 12, 2005 to December 12, 2005 to provide the public more time to submit proposals. All other requirements for this solicitation remain the same.

DATES: Applications should be submitted via www.grants.gov, and must be received by grants.gov no later than 11:59 PM EST on December 12, 2005. No facsimile or electronic mail applications will be accepted.

ADDRESSES: The address for submitting proposals electronically is: *http://www.grants.gov/*. Electronic submission is strongly encouraged. Applications should be submitted via *www.grants.gov*. If grants.gov cannot reasonably be used, applications must be postmarked, or provided to a delivery service and documented with a receipt, by December 12, 2005. NOAA Restoration Center, NOAA Fisheries, Office of Habitat Conservation (F/HC3), 1315 East West Highway, Silver Spring, MD 20910. ATTN: MDP Project Applications.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fairey *Liz.Fairey@noaa.gov* or 301- 713–3459) or Robin Bruckner *Robin.Bruckner@noaa.gov* or 301–713–0174).

National Environmental Satellite, Data, and Information Service (NESDIS)

1. Research in Satellite Oceanography (NESDIS-NESDISPO–2006–2000342)

NOAA extends the solicitation period from September 23, 2005 to October 21, 2005 to provide the public more time to submit proposals. All other requirements for this solicitation remain the same.

DATES: Proposals must be received no later than 4:00 p.m. Eastern Daylight Time, October 21, 2005.

ADDRESSES: The standard NOAA application package is available at: *http://www.grants.gov*. For applicants without Internet access, an application package may be received by contacting Kathy LeFevre, NOAA/NESDIS 5200 Auth Road, Room 701, Camp Springs, Maryland 20746, or by phone at 301–763–8127 X103, or via email at *Kathy.Lefevre@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Kathy LeFevre, NOAA/NESDIS 5200 Auth Road, Room 701, Camp Springs, Maryland 20746, or by phone at 301–763–8127 X103, or via email at *Kathy.Lefevre@noaa.gov*.

Limitation of Liability

Funding for programs listed in this notice is contingent upon the availability of Fiscal Year 2006 appropriations. Applicants are hereby given notice that funds have not yet been appropriated for the programs listed in this notice. In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

Universal Identifier

Applicants should be aware that they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, Vol. 67, No. 210, pp. 66177B66178, for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the internet (*http://www.dunandbradstreet.com*).

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA website: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216__6__TOC.pdf*, and the Council on Environmental Quality implementation regulations, *http://ceq.eh.doe.gov/nepa/regs/ceq/toc__ceq.htm* Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to

cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative

Agreements contained in the **Federal Register** notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: September 19, 2005.

Helen Hurcombe,

Director Acquisition and Grants Office, National Oceanic and Atmospheric Administration.

[FR Doc. 05–18963 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091605D]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council to convene a meeting of its Ad Hoc Red Snapper Advisory Panel (AHRSAP).

DATES: The meeting will be on October 13, 2005, from 8:30 a.m. – 4 p.m.

ADDRESSES: The meeting will be held at the Quorum Hotel Tampa, 700 North Westshore Boulevard, Tampa, FL 33609, telephone 813.289.8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813.348.1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene a meeting of its Ad Hoc Red Snapper Advisory Panel (AHRSAP) to review draft Amendment 26 to the Reef Fish Fishery Management Plan (FMP) that contains alternatives to establish an individual fishing quota (IFQ) program for the commercial red snapper fishery in the Gulf of Mexico that has been declared to be overfished and undergoing overfishing. The IFQ program is being considered to address existing and emerging problems resulting from overcapitalization in this fishery while it recovers. Actions being considered as part of the IFQ program include: its duration; eligibility for shares; initial allocation of shares; potential caps and/or restrictions on shares; and transferability of shares. Other actions being considered include: whether or not shares must be used; how adjustments to the commercial quota will affect allocations and shares; the possible requirement of vessel monitoring systems (VMS) on participating vessels; and a cost recovery plan. The AP will review this amendment and provide recommendations for the Council's Reef Fish Management Committee to review at their November 14 17, 2005 meeting.

Although other non-emergency issues not on the agendas may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see ADDRESSES) at least 5 working days prior to the meeting.

Dated: September 16, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries service.

[FR Doc. E5–5150 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091605E]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council to convene a joint meeting of the Standing and Special

Reef Fish Scientific and Statistical Committees (SSCs).

DATES: The meeting will be on October 12, 2005, from 8:30 a.m. – 4 p.m.

ADDRESSES: The meeting will be held at the Quorum Hotel Tampa, 700 North Westshore Boulevard, Tampa, FL 33609, telephone 813.289.8200.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813.348.1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene a joint meeting of the Standing and Special Reef Fish Scientific and Statistical Committees (SSCs) to review draft Amendment 26 to the Reef Fish Fishery Management Plan (FMP) that contains alternatives to establish an individual fishing quota (IFQ) program for the commercial red snapper fishery in the Gulf of Mexico that has been declared to be overfished and undergoing overfishing. The IFQ program is being considered to address existing and emerging problems resulting from overcapitalization in this fishery while it recovers. Actions being considered as part of the IFQ program include: its duration, eligibility for shares, initial allocation of shares, potential caps and/or restrictions on shares, and transferability of shares. Other actions being considered include: whether or not shares must be used; how adjustments to the commercial quota will affect allocations and shares; the possible requirement of vessel monitoring systems (VMS) on participating vessels; and a cost recovery plan. The SSCs will review this amendment and provide recommendations for the Council's Reef Fish Management Committee to review at their November 14 – 17, 2005 meeting.

Although other non-emergency issues not on the agendas may come before the SSCs for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during these meetings. Actions of the SSCs will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: September 16, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5152 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090705A]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet.

DATES: The meeting will be held on Thursday, September 22, 2005.

ADDRESSES: Two video conference locations have been reserved:

1. 709 W. 9th, Room 401, Federal Building, Juneau, AK, and
2. Alaska Fishery Science Center, 7600 Sand Point Way NE, Room 2143, Building 4, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The committee will meet to review revised draft Rockfish paper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: September 7, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5153 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091605C]

Pacific Fishery Management Council; Joint Salmon Technical Team and Scientific and Statistical Committee Salmon Subcommittee Work Session to Review Proposed Salmon Methodology Changes

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) Salmon Technical Team (STT) and Salmon Subcommittee (SSC) will hold a joint work session, which is open to the public.

DATES: The work session will be held Wednesday, October 12, 2005, from 9 a.m. to 4 p.m..

ADDRESSES: The work session will be held at the Sheraton Portland Airport Hotel, Columbian Room, 8235 NE Airport Way, Portland, OR 97220. Telephone: 503–281–2500

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon, 97220–1384, 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council, (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to brief

the STT and SSC on proposed changes to methods used to manage ocean salmon fisheries, and to review documentation of the Fishery Regulation Assessment Model (FRAM).

Although nonemergency issues not contained in the meeting agendas may come before the STT and the SSC subcommittee for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: September 16, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5148 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091605B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Management Team (GMT) will hold a working meeting, which is open to the public.

DATES: The GMT meeting will be held Tuesday, October 11, 2005, from 1 p.m. until business for the day is completed. The GMT meeting will reconvene Wednesday, October 12 through Friday, October 14, from 8:30 a.m. until business for the day is completed. The GMT meeting will be held at the National Oceanic and Atmospheric Administration (NOAA) Western Regional Center's Sand Point Facility, Northwest Region Office, Building 1, Northwest Region Conference Room, 7600 Sand Point Way NE, Seattle, WA 98115–0070, (206) 526–6150.

ADDRESSES: Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, Oregon 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Management Coordinator; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the GMT meeting is to discuss groundfish management measures in place for the fall and winter months and consider inseason adjustments to ongoing West Coast groundfish fisheries; review new groundfish stock assessments and rebuilding analyses for depleted groundfish species; develop a range of recommended 2007–2008 harvest specifications for groundfish stocks and stock complexes; develop a recommended range of preliminary management measures for 2007–2008 groundfish fisheries; discuss and recommend implementation strategies and draft amendatory language for Groundfish Fishery Management Plan (FMP) Amendment 18; discuss and recommend draft amendatory language for FMP Amendment 19 (specifying measures to protect West Coast groundfish essential fish habitat); discuss and recommend regulations for protecting West Coast groundfish essential fish habitat; discuss and consider recommendations for 2006 management measures for spiny dogfish and Pacific cod; discuss and consider recommendations for 2006 exempted fishing permit applications; discuss and consider recommendations for a final preferred alternative for expanding the groundfish vessel monitoring system; and address other assignments relating to groundfish management. No management actions will be decided by the GMT. The GMT's role will be development of recommendations for consideration by the Council at its November meeting in San Diego, California.

Although non-emergency issues not contained in the meeting agenda may come before the GMT for discussion, those issues may not be the subject of formal GMT action during this meeting. GMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the GMT's intent to take final action to address the emergency.

Special Accommodations

This 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.

Entry to the NOAA Western Regional Center's Sand Point Facility requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NOAA Western Regional Center's Facility, will be issued to non-Federal employees participating in the meeting.

Dated: September 16, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5151 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091605A]

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its Crustaceans Plan Team (CPT) meeting in Honolulu, HI. (see **SUPPLEMENTARY INFORMATION** for specific times, dates, and agenda items).

ADDRESSES: The CPT meeting will be held at the Western Pacific Fishery Management Council Office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

DATES: The meeting of the CPT will be held on October 4, 2005, from 1 – 5 p.m.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808)522–8220.

SUPPLEMENTARY INFORMATION: The CPT will meet on October 4, 2005 to discuss the following agenda items:

1. Introductions
2. Review of Last Plan Team Meeting and Recommendations
3. Main Hawaiian Island Lobster Resource Assessment
4. Northwestern Hawaiian Island Spiny Lobster Population Assessment
5. Update on Lobster Research Activities

The order in which agenda items are addressed may change. Public comment periods will be provided throughout the agenda. The Plan Team will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before the Plan Team for discussion, those issues may not be the subject of formal action during these meetings. Plan Team action will be restricted to those issues specifically listed in this document and any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522-8220 (voice) or (808)522-8226 (fax), at least 5 days prior to the meeting date.

Dated: September 16, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–5149 Filed 9–21–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Advisors (BOA) to the President, Naval Postgraduate School (NPS)

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting is to elicit the advice of the board on the Naval Service's Postgraduate Education Program and the collaborative exchange and partnership between NPS and the Air Force Institute of Technology (AFIT). The board examines the effectiveness with which the NPS is accomplishing its mission. To this end, the board will inquire into the curricula; instruction; physical equipment; administration; state of morale of the student body, faculty, and staff; fiscal affairs; and any other matters relating to the operation of the NPS as the board considers pertinent. This meeting will be open to the public.

DATES: The meeting will be held on Tuesday, October 18, 2005, from 8 a.m. to 4 p.m. and on Wednesday, October 19, 2005, from 8 a.m. to 12 p.m. All written comments regarding the NPS BOA should be received by October 7, 2005, and be directed to President, Naval Postgraduate School (Attn: Jaye Panza), 1 University Circle, Monterey, CA 93943–5000 or by fax 831–656–3145.

ADDRESSES: The meeting will be held at the Navy Memorial and Naval Heritage Center, President's Room, 701 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jaye Panza, Naval Postgraduate School, Monterey, CA, 93943–5000, telephone number 831–656–2514.

Dated: September 13, 2005.

I.C. Le Moyne Jr.,

Lieutenant, Judge Advocate Generals Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18902 Filed 9–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Co-Exclusive Patent Licenses; Southeastern Resources Management LLC, GCS Research LLC, and Sabeus Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Southeastern Resources Management LLC, GCS Research LLC, and Sabeus, Inc. revocable, nonassignable, partially co-exclusive licenses in the Government-owned inventions described in Navy Case Number 96517: U.S. Patent App. Ser. No. 11/056,630, entitled Natural Fiber Span Reflectometer Providing A Virtual Signal Sensing Array Capability, filed on February 7, 2005; Navy Case Number 96518: U.S. Patent App. Ser. No. 11/056,629, entitled Natural Fiber Span Reflectometer Providing A Virtual Phase Signal Sensing Array Capability, filed on February 7, 2005; Navy Case Number 96519: U.S. Patent App. Ser. No. 11/056,631, entitled Natural Fiber Span Reflectometer Providing A Virtual Differential Signal Sensing Array Capability, filed on February 7, 2005; and Navy Case Number 96650: U.S. Patent App. Ser. No. 11/056,632, entitled Natural Fiber Span Reflectometer Providing A Spread Spectrum Virtual Sensing Array Capability, filed on February 7, 2005.

DATES: Anyone wishing to object to the grant of these licenses has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Naval Undersea Warfare Center Division, Newport, 1176 Howell St, Bldg 990, Code 105, Newport, RI 02841.

FOR FURTHER INFORMATION CONTACT: Dr. Theresa A. Baus, Technology Transfer Manager, Naval Undersea Warfare Center Division, Newport, 1176 Howell St, Bldg 990, Code 105, Newport, RI 02841, telephone 401–832–8728, E-Mail: *bausta@npt.nuwc.navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: September 15, 2005.

I.C. Le Moyne, Jr.,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 05–18904 Filed 9–21–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Office of Science; Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy, (DOE).

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice announces a teleconference meeting of the Biological and Environmental Research Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, October 7, 2005, 4 p.m. to 6 p.m. E.D.T.

ADDRESSES: Participants may call Ms. Joanne Corcoran at (301) 903–6488 to receive a call-in number by October 5, 2005. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Dr. David Thomassen, Designated Federal Official, Biological and Environmental Research Advisory Committee, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290, (301) 903–9817 or *david.thomassen@science.doe.gov.*

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To provide advice on a

continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda:

- Discussion of BERAC subcommittee report on the review of the Environmental Molecular Sciences Laboratory. See complete BERAC Charge dated November 18, 2004.
- Discussion of BERAC subcommittee report on the value of the Genomics: GTL Facility for the Production of Proteins and Molecular Tags. See complete BERAC Charge dated August 15, 2005.
- Discussion of BERAC subcommittee report on the advantages and disadvantages of establishing more than one program in a particular technology at one of the Department's light sources and in particular the potential rationale for supporting the further development of the X4A and X4C beam lines at the National Synchrotron Light Source. See complete BERAC Charge dated January 14, 2005.
- New business
- Public Comment

Copies of the Charge letters may be found at *http://www.sc.doe.gov/ober/berac/charges.html.* All BERAC reports, once approved, are posted on the BERAC Web site at *http://www.science.doe.gov/ober/berac/Reports.html.*

Public Participation: The teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact David Thomassen at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on September 16, 2005.

Rachel M. Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 05–18942 Filed 9–21–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7973–6]

Science Advisory Board Staff Office; Notification of Upcoming SAB Meeting To Review the EPA Region 6 Geographic Information System Screening Tool (GISST)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office is announcing a public meeting of the SAB Ecological Processes and Effects Committee to review the EPA Region 6 Geographic Information System Screening Tool (GISST).

DATES: December 7–8, 2005. The SAB meeting will convene Wednesday, December 7 at 8:30 a.m., adjourning at approximately 4 p.m. (central time) Thursday, December 8.

ADDRESSES: The public meeting of the Panel will be held at the U.S. EPA Region 6 Headquarters Office, 1445 Ross Avenue, Dallas TX 75202.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), via telephone/voice mail at (202) 343–9995; via e-mail at *armitage.thomas@epa.gov*; or at the U.S. EPA Science Advisory Board (1400F), 1200 Pennsylvania Ave., NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab.*

For technical inquiries concerning the EPA Region 6 Geographic Information System Screening Tool, please contact Dr. Sharon Osowski by telephone/voice mail at 214–665–7506; via e-mail at *osowski.sharon@epa.gov*; or by mail at U.S. EPA Region 6 (mail code 6EN–XP), 1445 Ross Avenue, Suite 1200, Dallas, TX 75272–2733.

SUPPLEMENTARY INFORMATION:

Background

EPA Region 6 has requested that the SAB conduct a review of the Geographic Information System Screening Tool (GISST). The GISST is an environmental assessment tool developed to provide a systematic approach to considering single media and cumulative impacts in making decisions concerning complex projects, such as those subject to the National Environmental Policy Act (NEPA). The GISST uses geographic information system coverages and environmental and socioeconomic data to provide screening level assessments of the potential environmental vulnerabilities of project locations or the impacts of specified activities. Decision criteria are used in the GISST to score available data on a scale of one to five, where one equals lower potential environmental vulnerability or concern and five equals a higher level of vulnerability or concern. Scores are used by decision-makers to help prioritize potential project locations and alternatives and to help identify levels of environmental concern. EPA Region 6 is seeking comment from the SAB on the validity of the GISST methodology, the defensibility of the GISST results, and the usefulness of the GISST, particularly within the NEPA process. EPA Region 6 is also interested in making the GISST more user-friendly, and is seeking comments on further enhancements to the GISST.

Panel Formation

The Science Advisory Board is a chartered Federal advisory committee established under 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB Staff Office is augmenting the expertise on the SAB Ecological Processes and Effects Committee to conduct the review of the GISST. The panel being formed will provide advice to the EPA through the Chartered SAB. The Panel will comply with the provisions of the Federal Advisory Committee Act and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board, which can be found on the SAB's Web site at: *http://www.epa.gov/sab/pdf/ec0210.pdf.* The SAB Staff Office has previously formed panels that provided advice on EPA's Critical Ecosystem Assessment Model (CrEAM) and Regional Vulnerability Assessment (ReVA) methods for multi-scale decision-making. The expertise needed on the GISST Review Panel is similar to the expertise that was required for review of the CrEAM and the ReVA methods.

Therefore, the SAB Staff Office will select a set of nominees for consideration to serve on the GISST Review Panel (known as the ''Short List'') from the rosters of SAB panels that reviewed the CrEAM and ReVA methods, and from previously published Short Lists of candidates for those panels. The rosters of the SAB Critical Ecosystem Assessment Model Review Panel and the SAB Regional Vulnerability Assessment Advisory Panel, as well as the Short Lists of candidates for these panels, are available on the SAB Web site *http://www.epa.gov/sab.* The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and biosketch. Public comments on the Short List will be accepted for 14 calendar days. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for the Panel.

For the SAB, a balanced review panel (i.e., committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by SAB Staff independently of the background of each candidate (e.g., financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluation of an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Prospective panelists will also be required to fill-out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110–48.pdf.*

Availability of Meeting Materials

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Panel will hold a public meeting to conduct this review. The dates and times for the meeting are provided above. A roster of panel members, their biosketches, the meeting agenda, and the charge to the SAB panel will be posted on the SAB Web site prior to the meeting. Meeting materials also include the EPA Region 6 GIS Screening Tool (GISST) User's Manual available at the following URL address: *http://www.epa.gov/earth1r6/6en/xp/enxp2a3.htm.*

Procedures for Providing Public Comments

The SAB Staff Office accepts written public comments, and will accommodate oral public comments when possible. *Written Comments:* Written comments are preferred and should be submitted by e-mail to Dr. Thomas Armitage at *armitage.thomas@epa.gov* in Adobe Acrobat, WordPerfect, Word, or Rich Text files in IBM–PC/Windows 98/2000/XP format) by November 30, 2005. Those without access to e-mail may submit one signed hard copy of the comments to Dr. Armitage by mail or courier. Commenters planning to attend the meeting in person are asked to bring 35 copies of their comments for public distribution. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail or fax) and received by Dr. Armitage no later than November 30, 2005 to reserve time on the meeting agenda. Presentation time for oral comment will typically be about five minutes per speaker, but may be reduced depending on time availability and the number of requests.

Meeting Accommodations

Individuals requiring special accommodation to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 16, 2005.

Anthony F. Maciorowski,

Associate Director for Science, EPA Science Advisory Board Staff Office.

[FR Doc. 05–18954 Filed 9–21–05; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of an open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Wednesday, September 28, 2005 at 10:30 a.m. The meeting will held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: PEFCO Secured Note Issues (Resolution).

PUBLIC PARTICIPATION: The portion of the meeting, which relates to the above item, will be open to public participation. Attendees that are not employees of the Executive Branch will be required to sign in prior to the meeting.

FURTHER INFORMATION: For further information, contact: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. (202) 565–3957).

Howard A. Schweitzer,

General Counsel (Acting).

[FR Doc. 05–19076 Filed 9–20–05; 2:53 am]

BILLING CODE 6690–01–M

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Altering a System of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of altering a system of records maintained on individuals; request for comments.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Farm Credit Administration (FCA) is publishing an amended system notice pertaining to personnel security files. The system notice provides information on the existence and character of the system of records. This amended system notice reflects minor changes in the Agency's organization and filing, and clearly identifies the record sources for this system of records.

DATES: Written comments should be received by October 24, 2005. This notice will become effective without further publication on November 7,

2005, unless modified by a subsequent notice to incorporate comments received from the public.

ADDRESSES: Mail written comments to Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090. You may send comments by e-mail to *dbuccolo@fca.gov.* Copies of all communications received will be available for examination by interested parties in the offices of the FCA.

FOR FURTHER INFORMATION CONTACT:

Debra Buccolo, Privacy Act Officer, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4022, TTY (703) 883–4020,

Or

Jane Virga, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102–5090, (703) 883–4071, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: This publication satisfies the requirement of the Privacy Act of 1974 that an agency publish a system notice in the **Federal Register** when there is a revision, change, or addition to the system of records. The FCA did not file a System Report with Congress and the Office of Management and Budget because the changes were minor. There were no significant changes to this system of records. The amended system notice reflects minor changes in the Agency's organization and filing, and clearly identifies the record sources for this system of records.

The amended system of records is: FCA–9, Personnel Security Files. The notice is published in its entirety below.

FCA–9

SYSTEM NAME:

Personnel Security Files—FCA.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former FCA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains case files compiled during background investigations of employees in sensitive positions. It may include: (a) Security forms (*e.g.*, SF 85P, Questionnaire for Public Trust Positions); (b) investigative reports that may include a credit check, a check of police records, and interviews with neighbors, former supervisors, and coworkers; (c) a determination of suitability for employment or for a security clearance by FCA's security officer; and (d) issuance of clearance statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 2243, 2252; Executive orders 10450 and 10577.

PURPOSE(S):

We use information in this system of records to determine suitability for employment and to issue a clearance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

We maintain records in file folders.

RETRIEVABILITY:

We retrieve records by name.

SAFEGUARDS:

We maintain records in a locked safe in an area that is secured after business hours. Only the Personnel Security Officer and Alternate Personnel Security Officer have access to the records.

RETENTION AND DISPOSAL:

Files are retained in accordance with the National Archives and Records Administration General Records Schedule requirements for personnel security records.

SYSTEM MANAGER(S) AND ADDRESS:

Personnel Security Officer, Office of the Chief Administrative Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Address inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

To obtain a record, contact: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

CONTESTING RECORD PROCEDURES:

Direct requests for amendments to a record to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, as provided in 12 CFR part 603.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from: (1) The individual to whom the record applies; (2) Office of Personnel Management's investigative files maintained by the Investigations Service; (3) employment information maintained by the FCA; and (4) external and internal investigative inquiries by Federal law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information in this system of records about a confidential source's identity is subject to a specific exemption, 5 U.S.C. 552a(k)(5), to ensure accurate information on employment suitability.

Dated: September 16, 2005.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 05–18891 Filed 9–21–05; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, September 27, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–19075 Filed 9–20–05; 2:53 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 as Amended by Section 102 of the REAL ID Act of 2005

AGENCY: Office of the Secretary, Department of Homeland Security

ACTION: Notice of determination.

SUMMARY: The Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations and other legal requirements in order to ensure the expeditious construction of barriers and roads along the international land border of the United States in California.

DATES: This Notice is effective on September 22, 2005.

Determination and Waiver

In section 102(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, Div. C, 110 Stat. 3009–546, 3009–554 (Sept. 30, 1996) (8 U.S.C 1103 note (2000) (IIRIRA)), Congress provided that the Attorney General shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. Pursuant to sections 1511 and 1517 of the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135, 2309, 2311 (Nov. 25, 2002) (HSA) (6 U.S.C. 551, 557), the authorities of the Attorney General contained in section 102 of the IIRIRA were transferred to me. In section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (REAL ID Act) 8 U.S.C. 1103 note), Congress granted to me the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads under section 102 of IIRIRA.

In section 102(b) of the IIRIRA, Congress specifically provided for the construction along the 14 miles of the international land border of the United States, starting at the Pacific Ocean and extending eastward, of second and third fences, in addition to the existing reinforced fence, and for roads between the fences. In section 446 of the HSA, Congress expressed its sense that completing the 14-mile border project under section 102(b) of the IIRIRA should be a priority for the Secretary of Homeland Security. Nearly nine years after the passage of the IIRIRA, the project prescribed in section 102(b) of the IIRIRA remains incomplete.

In order to ensure the expeditious construction of the barriers and roads that Congress prescribed in section 102(b) of the IIRIRA, regarding which Congress expressed its support in section 446 of the HSA, 116 Stat. 2195 (6 U.S.C. 256), and which is an area of high illegal entry into the United States, I have determined that it is necessary that I exercise the authority that was transferred to me by sections 1511 and 1517 of the HSA and that is vested in me by section 102(c) of the IIRIRA as amended by section 102 of the REAL ID Act. Accordingly, I hereby waive in their entirety, with respect to the construction of the barriers and roads prescribed in section 102(b) of the IIRIRA (including, but not limited to, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of fences, roads, supporting elements, drainage, erosion controls, safety features, detection equipment, and lighting), all federal, state, or other laws, regulations and legal requirements of, deriving from, or related to the subject of, the following laws, as amended: The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852, (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)), the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)), the Coastal Zone Management Act (Pub. L. 92–583, 86 Stat. 1280 (Oct. 27, 1972) (16 U.S.C. 1451 *et seq.*)), the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) (Act of June 30, 1948, c. 758, 62 Stat. 1155 (33 U.S.C. 1251 *et seq.*)), the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966) (16 U.S.C. 470 *et seq.*)), the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*), the Clean Air Act (42 U.S.C. 7401 *et seq.*), and the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). I reserve the authority to make further waivers from time to time under the authority granted to me by section 102(c) of the IIRIRA, as amended by section 102 of the REAL ID Act, as I may determine to be necessary to accomplish the provisions of section 102 of IIRIRA.

Dated: September 13, 2005.

Michael Chertoff,

Secretary of Homeland Security.

[FR Doc. 05–18882 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Automated Commercial Environment (ACE): Elimination of Bond Rider Requirement for Participation in Periodic Monthly Statement Payment Process

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice announces changes in the Bureau of Customs and Border Protection's (CBP) National Customs Automation Program (NCAP) test concerning periodic monthly deposit of estimated duties and fees. Participants in the Periodic Monthly Statement test are no longer required to provide a bond rider covering the periodic payment of estimated duties and fees. Nonpayment or untimely payment of estimated duties and fees, however, may result in action by CBP to impose sanctions on the delinquent importer of record or to allow the surety to terminate its basic importation bond. If the bond principal is a participant in the Periodic Monthly Statement test, sureties will now be allowed, under certain conditions, to terminate bonds with 3 business days notice to the bond principal and CBP.

EFFECTIVE DATES: The elimination of the requirement to provide a bond rider covering the periodic payment of estimated duties is effective immediately.

ADDRESSES: Comments concerning this notice should be submitted to Robert B. Hamilton via e-mail at *Robert.B.Hamilton@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2004, the Bureau of Customs and Border Protection (CBP) published a General Notice in the **Federal Register** (69 FR 5362) announcing the National Customs Automation Program (NCAP) test for Periodic Monthly Payment Statement Process. The test, which is part of CBP's Automated Commercial Environment (ACE), benefits participants by giving them access to operational data through the ACE Secured Data Portal (''ACE Portal''), which provides them the capability to interact electronically with CBP, and by allowing them to deposit estimated duties and fees on a monthly basis based on a Periodic Monthly Statement generated by CBP.

When the test started, only importers were eligible to apply for the test. Eligibility was later expanded to allow brokers to apply if they were specifically designated by an ACE importer.

On September 8, 2004, CBP published a General Notice in the **Federal Register** (69 FR 54302) which invited customs brokers, regardless of whether they were designated by participating importers to make Periodic Monthly Statement payments on their behalf, to apply to participate in the test. That notice set

forth eligibility requirements for both importers and brokers.

On February 1, 2005, CBP published a General Notice in the **Federal Register** (70 FR 5199) announcing that applicants seeking to establish importer or broker accounts so as to access the ACE Portal, or to participate in any ACE test (including the test for Periodic Monthly Payment Statement Process), are no longer required to provide a statement certifying participation in the Customs Trade Partnership Against Terrorism (C–TPAT).

On August 8, 2005, CBP published a General Notice in the **Federal Register** (70 FR 45736) changing the time period allowed for the deposit of the duties and fees from the 15th calendar day to the 15th working day of the month following the month in which the goods are either entered or released. That change was made in order to comply with the provisions of section 2004 of the Miscellaneous Trade and Technical Corrections Act of 2004, Public Law 108–429, which extended the time of deposit of those estimated duties and fees. The document also advised that entries containing Census errors are eligible to be placed on a Periodic Daily Statement and designated for monthly payment. Finally, the document described those situations where liquidated damages would be imposed for failing to pay estimated duties in a timely manner.

As provided in the February 4, 2004 General Notice announcing the test, participants in the Periodic Monthly Statement test are required to schedule entries for monthly payment. A Periodic Monthly Statement will list Periodic Daily Statements that have been designated for monthly payment. The Periodic Monthly Statement can be created on a port basis by the importer or broker, as was the case with existing daily statements in the Automated Commercial System (ACS) (ACE is the successor to ACS). The Periodic Monthly Statement can be created on a national basis by an Automated Broker Interface (ABI) filer. If an importer chooses to file the Periodic Monthly Statement on a national basis he must use his filer code and schedule and pay the monthly statements timely. The Periodic Monthly Statement will be routed under existing CBP procedures. Brokers will only view/receive information that they have filed on an importer's behalf. ACE will not route a Periodic Monthly Statement to a broker through ABI if that statement lists information filed by another broker.

The February 4, 2004, Notice also stated that, in addition to other responsibilities, test participants are required to provide a bond rider covering the periodic payment of estimated duties.

Elimination of the Periodic Monthly Statement Payment Bond Rider

In order to open participation in the Periodic Monthly Statement test to the widest number of importers, CBP will no longer require that an applicant, in order to participate in the test, submit a bond rider as required by the Federal Register Notice of February 4, 2004. CBP has determined that the rider is not necessary, inasmuch as the terms and conditions of the basic importation bond under section 113.62 of the CBP Regulations (title 19 Code of Federal Regulations (CFR), section 113.62) require the bond obligors to deposit, in the time period prescribed by law or regulation, any duties, taxes, and charges imposed, or estimated to be due, at the time of merchandise release or withdrawal.

Submission of the bond rider does have the effect of alerting the surety guaranteeing performance that the bond principal is participating in the Periodic Monthly Statement test. CBP agrees that, as a result of elimination of the rider submission requirement, it will notify sureties, electronically, of a bond principal's participation in the test.

Failure To Pay, or To Timely Pay, Estimated Duties and Fees

A bond principal who fails to meet its obligation to pay estimated duties and fees under the test should not continue to enjoy the benefits of the deferred payment of estimated duties and fees. Such an allowance would further stress the bond amount and place the revenue in jeopardy. As such, CBP, through this notice, suspends those regulations in Part 142 relating to the delinquent payment of CBP bills as they relate to non-payment or late payment of estimated duties and fees made under the Periodic Monthly Statement test. Any bond principal who is late with an estimated monthly statement estimated duty payment by more than 2 business days will be notified by CBP, either electronically or by paper notification, that immediately it shall be required to file entry summary documentation with estimated duties and fees attached before its merchandise may be released from any CBP port. The surety on the affected bond will also be notified. The bond principal will only be released from such a requirement upon full payment of any unpaid estimated duties and fees that have come due under the Periodic Monthly Statement test.

During the test, CBP will retain the right to deny Periodic Monthly Statement payment privileges to any importer that is repeatedly delinquent in the payment of estimated duties and fees due.

Termination of Bonds

For purposes of the test, the provisions of 19 CFR part 113 relating to termination of bonds will be suspended, in certain situations, insofar as sureties will be permitted to terminate bonds with 3 business days notice to the bond principal and CBP. Section 113.27(b) of the CBP Regulations (19 CFR 113.27(b)) generally requires a 30-day notice (with exceptions) for surety termination of a bond. Sureties may now terminate bonds with 3 business days notice when termination by the surety occurs because the surety does not accept the risk relating to participation by the bond principal in the Periodic Monthly Statement test. Sureties may also terminate bonds with 3 business days notice when termination is a result of the failure of the bond principal to perform obligations arising as a result of participation in the test; however, a termination under these circumstances can only take place after the surety has satisfied its obligations which have arisen as a result of the principal's failure to perform. The importer whose bond is terminated by a surety will be suspended from participation in the test unless a new surety is obtained. Notification of termination to CBP shall be provided to the Revenue Division, Office of Finance, 6650 Telecom Dr., Suite 100, Attn: Bond Team, Indianapolis, Indiana 46278. Notice of termination to CBP must be in writing and must be delivered by overnight mail, other express delivery service, or fax. Notice of termination to the bond principal must be in writing and must be delivered by overnight mail or other express delivery service. Any notice of termination provided to CBP must include a declaration that the bond principal has been notified of termination.

Suspension of the Regulations

During the testing of the Periodic Monthly Statement process, CBP will suspend provisions in Parts 24, 141, 142, and 143 of the Customs and Border Protection Regulations (Title 19 Code of Federal Regulations) pertaining to financial, accounting, entry procedures, deposit of estimated duties and fees, and the delinquent payment of CBP bills. CBP will also suspend the provisions of Part 113 of the Customs and Border Protection Regulations with regard to surety termination of bonds only in the manner and for the reasons

discussed in this Notice. All other provisions of Part 113 of the Customs and Border Protection Regulations remain in effect during this test. All of the terms of the test and criteria for participation therein, as announced in the previous notices identified above, continue to be applicable unless changed by this notice.

Dated: September 19, 2005.

Thomas S. Winkowski,

Acting Deputy Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–18912 Filed 9–21–05; 8:45 am]

BILLING CODE 9110–06–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–718 (Second Review)]

Glycine From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on glycine from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: September 7, 2005.

FOR FURTHER INFORMATION CONTACT: Russell Duncan (202–708–4727), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—On September 7, 2005, the Commission determined that the domestic interested party group response to its notice of institution (70 FR 31534, June 1, 2005) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.[2]

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on September 30, 2005, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[3] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 5, 2005, and may not contain new factual information. Any person that is neither a party to the review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 5, 2005. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, comments (which shall not contain new factual information) on Commerce's final results may be submitted three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 (c) of the Commission's rules.

By order of the Commission.

Issued: September 16, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18894 Filed 9–21–05; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] Commissioner Aranoff did not participate in this determination.

[3] The Commission has found the responses submitted by the Glycine Fair Trade Committee and its individual members Chattem Chemicals, Inc., and Hampshire Chemical Corp., to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade, 2006 Annual Report

AGENCY: United States International Trade Commission.

ACTION: Scheduling of 2006 report on Recent Trends in U.S. Services Trade and opportunity for the public to submit information.

SUMMARY: The International Trade Commission (ITC) has prepared and published annual reports in this series under investigation No. 332–345 since 1996 (Recent Trends in U.S. Services Trade). The 2006 report, which the Commission plans to publish in June 2006, will cover cross-border trade for the period ending in 2004 and transactions by affiliates based outside the country of their parent firm for the period ending in 2003. The Commission is inviting interested members of the public to furnish information in connection with the 2006 report.

EFFECTIVE DATE: September 14, 2005.

FOR FURTHER INFORMATION CONTACT: Questions about the report may be directed to the project leader, Eric Forden, Office of Industries (202–205–3235; *eric.forden@usitc.gov*) or to Richard Brown, Office of Industries

(202–205–3438; *richard.brown@usitc.gov*). For information on legal aspects, please contact William Gearhart, Office of General Counsel (202–205–3091; *william.gearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Public Affairs Officer (202–205–1819; *margaret.olaughlin@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. Inquiries or suggestions from the public regarding the report are welcome and should be directed to the Office of the Secretary at 202–205–2000; written inquiries should be addressed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. General information concerning the Commission may also be obtained by accessing its Internet server *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://edis.usitc.gov.*

Background: Under the investigation, the Commission publishes two annual reports, one on services trade (Recent Trends in U.S. Services Trade), and a second on merchandise trade (Shifts in U.S. Merchandise Trade). The latest version of the Commission's Recent Trends in U.S. Services Trade was published in June 2004 and may be obtained from the ITC's Internet server (*http://www.usitc.gov*); no report was published in 2005. A printed report may be requested by contacting the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

The initial notice of institution of this investigation was published in the **Federal Register** on September 8, 1993 (58 FR 47287) and provided for what is now the report on merchandise trade. The Commission expanded the scope of the investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The separate report on services trade has been published annually since 1996, except in 2005. As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in selected services industries during the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis (for the 2006 report, data for the period described above).

Written Submissions: The Commission does not plan to hold a public hearing in connection with preparation of the 2006 report. However, interested persons are invited to submit written statements containing data and other information concerning the matters to be addressed in the reports. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, and should be received no later than the close of business on October 28, 2005. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, as least four (4) additional copies must be filed, in which the confidential information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''non-confidential'' version, and that the confidential business information be clearly identified by means of brackets. All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission plans to make the 2006 report available to the public in its entirety; it will not publish such confidential business information in its report in a manner that would reveal the operations of the firm supplying the information.

By order of the Commission.

Issued: September 16, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–18893 Filed 9–21–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *AGP Corn Processing, Inc.* Civil Action No. 8:05 CV418, was lodged on August 29, 2005, with the United States District Court for the District of Nebraska. This consent decree requires the defendant to pay a civil panalty of $40,000 and to perform injunctive relief in the form of installation of control technology to address Clean Air Act violations for the failure to obtain permits and install best achievable control technology (BACT) as required by the regulations for the Prevention of Significant Deterioration (PSD) at the defendant's ethanol plant.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *AGP Corn Processing, Inc.,* DOJ Ref. 90–5–2–1–08119.

The proposed consent decree may be examined at the office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, Nebraska 68102, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the comment period, the consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree also may be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.00 (without attachments) or $12.25 (with attachments) for *United States* v. *AGP Corn Processing, Inc.,* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 05–18884 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Pursuant to Section 122(d) of CERCLA, 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 8, 2005, a proposed Consent Decree (''Decree'' in *United States* v. *Massachusetts Bay Transportation Authority*, Civ. No. 05–11827 RWZ, was lodged with the United States District Court for the District of Massachusetts.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), seeks cost recovery with respect to the Morses Pond Culvert Superfund Site (the ''Site''), located in the Town of Wellesley, Massachusetts, pursuant to CERCLA, against the Massachusetts Bay Transportation Authority (''MBTA''), the current owner of a portion of the Site. The proposed Decree settles the claims brought by the United States against MBTA. Under the terms of the proposed settlement, within thirty days of entry of the Decree, MBTA will pay $150,000, plus interest, to reimburse the United States for a portion of its costs incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Massachusetts Bay Transportation Authority*, DOJ Ref. #90–11–3–07035/2. A copy of the comments should be sent to Donald G. Frankel, Department of Justice, Suite 616, One Gateway Center, Newton, MA, 02458.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Massachusetts, Office of the United States Attorney, 1 Courthouse Way, John Joseph Moakley Courthouse, Boston, Massachusetts 02210, and at the United States Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may be also be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood at *tonia.fleetwood@usdoj.gov* or fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Decree from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction costs) payable to the United States Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–18886 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Modification of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, the Environment and Natural Resources Division of the Department of Justice proposes to modify a Consent Decree in *United States and State of Louisiana* v. *Sewerage District No. 1 of Iberia Parish,* Civil Action No. 04–1352. The Consent Decree was entered by the United States District Court for the Western District of Louisiana on December 20, 2004.

In this action the United States, and its co-plaintiff the State of Louisiana, sought injunctive relief and a civil penalty to address sanitary sewer overflows and other violations of the Clean Water Act and the National Pollutant Discharge Elimination System (''NPDES'') permit issued to Sewerage District No. 1 of Iberia Parish (''Sewerage District'') for the Tete Bayou publicly owned treatment works. Under the Consent Decree, the Sewerage District agreed, *inter alia,* to construct an equalization basin at the Tete Bayou Plant to relieve wet weather plant hydraulic overload conditions; and to comprehensively study and rehabilitate the Sewerage District's collection system to eliminate sanitary sewer overflows from the system. Additionally, the Sewerage District paid the United States and LDEQ a civil penalty of $51,400. The Sewerage District has asked for a modification of Paragraph 17.A of the Consent Decree to allow an extension of the end date for the completion of collection system rehabilitation projects from December 30, 2008, to December 30, 2009. The United States and the State of Louisiana believe that the proposed modification is appropriate here.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the modification of the Consent Decree. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to United States v. Sewerage District No. 1 of Liberia Parish, D.J. Ref. No. 90–5–1–1–07473.

The proposed modification to the Consent Decree may be examined during the public comment period on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the modification of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1537. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–18885 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with 28 CFR 50.7 and 42 U.S.C. 9622(i), notice is hereby given that on September 13, 2005, a Settlement Agreement was lodged with the United States District Court for the District of Puerto Rico in *United States* v. *Tropical Fruit, S.E., et al.,* Civil Action No. 97–1442–DRD. On October 25, 2001, the Court entered Decree between the United States, on behalf of the U.S. Environmental Protection Agency (''EPA''), and defendants pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 *et seq.,* and the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.,* with respect to a Farm located in Rural Zone Boca, Guayanilla, Puerto Rico. The Consent Decree required Defendants to pay $35,000 in penalties

and CERCLA response costs and to comply with extensive injunctive relief measures, including the creation of a non-spray buffer zone on the northern and a portion of the western perimeter of the Farm which will vary in width up to 173 feet. In December 2004, the United States filed a Motion to Enforce the Consent Decree and for stipulated penalties in that the United States alleged that Defendants violated certain provisions of the Consent Decree including the requirement that Defendants remove ore relocate mango trees and banana trees from the buffer zone area, and replace them with plantain trees which would not be sprayed.

The United States and Defendants have reached a proposed agreement to resolve the United States' Motion to Enforce the Consent Decree and its request for stipulated penalties, which Settlement Agreement requires Defendants, *inter alia,* to remove or relocate the mango trees they were required to remove or relocate under the Decree by April 1, 2006, which schedule will allow Defendants to transplant the mango trees elsewhere at the Farm, and to replace them with bananas or plantains. The Settlement Agreement authorizes the Farm to plant, in two perimeter areas, an extra low of neem trees as a barrier instead of planting bananas of plantains. The Settlement Agreement allows Defendants to apply low-toxicity pesticides in limited circumstances and under application restrictions in buffer zone areas to address an outbreak of Sigatoka Negra. The Settlement Agreement also requires the Farm to pay a stipulated penalty of $50,000 over a one year period, plus interest.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, Federal Building Room 452, Carlos Chardon Avenue, Hato Rey, PR 00918, and at two offices of the Environmental Protection Agency, Region II: EPA, 290 Broadway, 17th floor, New York, NY 10007–1866 or EPA, Carribean Environmental Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon, Stop 22, Santurce, Puerto Rico, 00907–4127. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation no. (202) 514–1547, referencing DOJ No. 1–1700/1. For a copy of the proposed Settlement Agreement including the signature pages and attachments, in requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $3.50 payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environmental & Natural Resources Division.

[FR Doc. 05–18883 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 2, 2005, three proposed Consent Decrees were lodged with the United States District Court for the Eastern District of Pennsylvania in *U.S.* v. *Union Corps., et al.,* Civil Action No. 80–1589, DJ #90–11–2–1183A.

The consent decrees propose to resolve the liability of Defendants Irvin G. Schorsch and John B. Schorsch, and Third Party Defendants Baltimore Gas and Electric Company, Consolidated Edison Company of New York, Inc., Jersey Center Power & Light Company, Long Island Lighting Company d/b/a LIPA, Metropolitan Edison Company, Orange and Rockland Utilities, PECO Energy Company, Potomac Electric Power Company, PP&L Electric Utilities Corporation, Public Service Electric and Gas Company, and Virginia Power Company (''the Utilities'') under the Comprehensive Environment Response, Compensation and Liability Act, 42 U.S.C. 9606 and 9607, and the Resource Conservation and Recovery Act ''RCRA''), 42 U.S.C. 6973, *et seq.* at the Metal Bank Superfund Site, located in Philadelphia, Pennsylvania (''the Site'').

The consent decree would globally settle this action. The Utilities would implement the Revised Remedial Plan for the Site, which has been approved by EPA, Region 3, and is attached to the Consent Decrees as an appendix, the implementation of which would be overseen by EPA. EPA would make available to the Utilities the moneys received and to be received from Outsourcing Solutions, Inc., under an earlier settlement with the corporate defendants in bankruptcy, which is expected to total $13.235 million. Irvin Schorsch would pay $9 million, $5.5 million of which would be paid to the United States and $3.5 million would be paid to the Utilities, and he would also guarantee up to $2 million of OSI's payments. John Schorsch would pay $600,000, $50,000 of which would be paid to the United States and $550,000 would be paid to the utilities. Finally, the Utilities would pay all costs for the remedy, excluding oversight costs, not otherwise provided for and will indemnify Defendant Irvin G. Schorsch for any liability for cost overruns for work done under the revised remedial plan or under reopeners for future work needed at the site in connection with the site remediation.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Amendment. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Union Corp., et al.,* Civil Action No. 80–1589 (E.D.Pa.).

The Consent Decrees may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, Pennsylvania. During the public comment period, the Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.htm.* A copy of the Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $47.75 payable to the U.S. Treasury. In requesting a copy exclusive of exhibits and defendants' signatures, please enclosed a check in the amount of $8.25 payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–18887 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on August 29, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Microcontaminant Reduction Venture (''MRV'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, one of the parties to MRV, Vulcan Materials Company, Birmingham, AL, has ceased manufacturing pentachlorophenol, and MRV has terminated.

On June 13, 2001, MRV filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 19, 2001 (66 FR 37709).

The last notification was filed with the Department on June 8, 2005. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 7, 2005 (70 FR 39338).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–18946 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine

Notice is hereby given that, on August 10, 2005, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute: Cooperative Research Group on High Efficiency Durable Gasoline Engine (''HEDGE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ford Motor Company, Dearborn, MI; Nissan Motor Co., Ltd., Kasagawa, JAPAN; Renault s.a.s., Société par Actions Simplifiée, Boulogne-Billancourt, FRANCE; and Valeo Systemes de Controle Moteur, Cedex, FRANCE have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HEDGE intends to file additional written notification disclosing all changes in membership.

On June 10, 2005, HEDGE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 7, 2005 (70 FR 39339).

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 05–18945 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Emergency Notice of Information Collection Under Review: Application for Procurement Quota for Controlled Substances.

The Department of Justice, Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by September 30, 2005. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the Office of Management and Budget, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments are encouraged and will be accepted for 60 days until November 21, 2005.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Patricia M. Good, Chief, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* Revision of a Currently Approved Collection.

(2) *The title of the form/collection:* Application for procurement quota for controlled substances.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: DEA Form 250. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Title 21 U.S.C. 826 and 21 CFR 1303.12, require that U.S. companies who desire to use any basic class of controlled substances listed in Schedule I or II for purposes of manufacturing during the next calendar year shall apply on DEA Form 250 for procurement quota for such class.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: It is estimated that 255 persons submit 1,106 completed DEA Forms 250, at 1 hour per form, for an annual burden of 1,106 hours. It is estimated that 25 companies submit information pertaining to new drug applications or abbreviated new drug applications, at 2 hours per response, for an annual burden of 50 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that the total annual burden associated with this information collection is 1,156 hours.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530, or by e-mail at *brenda.e.dyer@usdoj.gov.*

Dated: September 16, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–18903 Filed 9–21–05; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Prepare a Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement for the National Science Foundation To Address Potential Impacts on the Marine Environment Related to the Use of Seismic Sources in Support of NSF-Funded Research by U.S. Academic Scientists.

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the National Science Foundation (NSF) announces its intent to prepare a Programmatic Environmental Impact Statement/Overseas Environmental Impact Statement (EIS/OES) to evaluate the potential environmental impacts associated with the use of seismic sources in support of NSF-funded research by U.S. academic scientists. The National Marine Fisheries Service (NMFS), a part of the National Oceanic and Atmospheric Administration, is being invited to be a cooperating agency in the preparation of the Programmatic EIS/OES.

Publication of this notice begins the official scoping process that will help identify alternatives and determine the scope of environmental issues to be addressed in the Programmatic EIS/OEIS. This notice requests public participation in the scoping process and provides information on how to participate.

ADDRESSES AND DATES: Public-scoping meetings will be held at the following dates, times, and locations:

1. Wednesday, October 5, 2005, 1–5 p.m., Silver Spring Metro Center Building 4, Science Center, 1301 East-West Highway, Silver Spring, MD;
2. Thursday, October 6, 2005, 5–9 p.m., J. Erick Jonhhon Center of the National Academy of Sciences, Carriage House, 314 Quissett Avenue, Woods Hole, MA;
3. Wednesday, October 12, 2005, 5–9 p.m., Room C126, 1000 Discovery Drive, Texas A&M University, College Station, TX;
4. Friday, October 14, 2005, 5–9 p.m., Egan Civic and Convention Center, 555 West Fifth Avenue, Anchorage, AK;
5. Monday, October 17, 2005, 5–9 p.m., 100 Vaughn Hall, Discovery Way, Scripps Institution of Oceanography, La Jolla, CA; and
6. Wednesday, October 19, 2005, 5–9 p.m., Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI.

Written comments will be accepted at these meetings as well as during the scoping period, and can be mailed to NSF by October 28, 2005 (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Written statements and questions regarding the scoping process should be mailed to Dr. Alexander Shor, Program Director, Oceanographic Instrumentation and Technical Services, Division of Ocean Sciences, National Science Foundation, 4201 Wilson Boulevard, Suite 725, Arlington, VA 22230; voice (703) 292–8583 or e-mail at *OCE-EIS@nsf.gov.*

SUPPLEMENTARY INFORMATION: In the last 2 years, NSF has prepared 16 environmental assessments (EAs) on the impact of seismic noise on endangered species and marine mammals during planned marine research projects concerning the geology and geophysics of the seafloor. The EAs were prepared for various worldwide, academic research cruises that required the use of various marine seismic sources. These EAs were intended to address regulations and public concern over anthropogenic noise in the marine environment and its possible, negative impacts on marine life. They were prepared to address U.S. laws and regulations, including NEPA; the Marine Mammal Protection Act of 1972 (MMPA); the endangered Species Act of 1973 (ESA); and Executive Order (EO) 12114 (1979), *Environmental Effects Abroad of Major Federal Actions.* In some cases they have also been used as background information to address foreign regulations, especially where research has been carried out entirely or partially within territorial waters or Exclusive Economic Zone waters surrounding a foreign nation.

In each case, the NSF EA and a Finding of No Significant Impact (FONSI) has been used as the basis for consultation with NMFS Office of Protected Resources (OPR) under Section 7(a)(2) of the ESA, and in each case for which an action is finalized, NMFS OPR has issued a Biological Opinion and a related Incidental Take Statement authorizing the proposed project to be undertaken, and indicating any mitigation measures needed to reduce impacts on endangered species. In parallel with this effort, a separate application has been submitted for each cruise to apply for an Incidental Harassment Authorization (IHA) under the MMPA from NMFS OPR, and an IHA has also been issued by NMFS for each of the projects. Increasingly over the past 2 years, public comments have expressed concern that by evaluating individual projects in isolation, the cumulative impacts of NSF-funded seismic activities on the marine environment are not being adequately addressed. NSF and NMFS OPR personnel have examined this concern and have concluded that a Programmatic EIS/OEIS could provide both the holistic view of cumulative impacts, as well as provide the principal technical and environmental foundation to form the basis of evaluating environmental impacts of most NSF-funded seismic efforts.

The Programmatic EIS/OEIS will take a view of the planned program as a whole and thereby assemble and analyze the broadest range of direct, indirect, and cumulative impacts associated with the entire program rather than assessing individual cruises separately. This approach will also address possible concerns that NSF is analyzing their research program in segments, rather than holistically where the true cumulative impacts of the entire program can be identified. Further, the parent Programmatic EIS/OEIS will provide a broad analytical backdrop within which NSF, using tiered documents, will be able to analyze cruise-specific issues relevant for analysis and decision. Additionally, it will streamline the preparation of subsequent environmental documents for the individual cruises and also

enable NSF to identify any prudent conservation practices and mitigation measures that may be applied across the entire program. The site-specific information is required by NMFS (and sometimes the U.S. Fish and Wildlife Service) for purposes of preparing Biological Opinions and Incidental Take Statements required by ESA.

The main focus of the Programmatic EIS/OEIS will be on the seismic operations to be conducted from NSF's primary seismic ship, soon to be the R/V Marcus G. Langseth. The Programmatic EIS/OEIS will address the variety of airgun configurations to be operated from the Langseth, as well as the multi-beam bathymetric sonar, sub-bottom profiler, and other acoustic sources to be deployed as standard equipment. In addition, the Programmatic EIS/OEIS will deal with the generally small airgun sources occasionally operated from other vessels under NSF sponsorship.

Major environmental issues that will be addressed in the Programmatic EIS/OEIS include marine biological resources including Essential Fish Habitat (EFH), acoustic impacts to marine mammals, fish, sea turtles, invertebrates, and threatened and endangered species; cultural resources; human health and safety; socioeconomics and land use (*i.e.,* commercial, private, and recreational uses of the marine environment); and water quality.

NSF is initiating this scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. NSF will hold public scoping meetings as identified in the **DATES AND ADDRESSES** section of this notice. These meetings will also be advertised in area newspapers. NSF and NMFS representatives will be available at these meetings to receive comments from the public regarding issues of concern to the public. Federal, state, and local agencies and interested individuals are encouraged to take this opportunity to identify environmental concerns that should be addressed during the preparation of the Programmatic EIS/OEIS. Agencies and the public are also invited and encouraged to provide written comments on scoping issues in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe issues or topics that the commenter believes the Programmatic EIS/OEIS should address.

We invite you to learn about the NSF seismic research program at an informational open house, and to assist NSF in defining the alternatives and the scope of environmental issues related to the seismic research program. All our public meeting locations are wheelchair-accessible. If you plan to attend a scoping meeting/open house, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify NSF (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

We request public comments or other relevant information on environmental issues related to the NSF seismic research program. The public meetings are not the only opportunity you have to comment. In addition to or in place of attending a meeting, you can submit comments to Dr. Alexander Shor by October 28, 2005 (see **FOR FURTHER INFORMATION CONTACT**). We will consider all comments received during the comment period. We request that you include in your comments:

- Your name and address (especially if you would like to receive a copy of the Draft Programmatic EIS/OEIS upon completion);
- An explanation for each comment; and
- Include any background materials to support your comments as you feel necessary.

You may mail, e-mail, or hand deliver your comments to NSF (see **FOR FURTHER INFORMATION CONTACT**). All comment submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. Please note that regardless of the method used for submitting comments or material, all submissions will be publicly available and, therefore, any personal information you provide in your comments will be open for public review. In addition, if you wish to receive a copy of the Draft Programmatic EIS/OEIS, please indicate this in your comment. No decision will be made to implement any alternative until the NEPA process is completed.

Dated: September 19, 2005.

Alexander Shor,

Program Director, Division of Ocean Sciences, National Science Foundation.

[FR Doc. 05–18962 Filed 9–21–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions

DATE AND TIME: September 28–29, 2005.

September 28, 2005, 8:15 a.m.–5 p.m.
Sessions:
8:15 a.m.–9 a.m., Open;
9 a.m.–9:30 a.m., Closed;
9:30 a.m.—10:30 a.m., Open;
10:30 a.m.–11 a.m., Open;
11 a.m.–11:45 a.m., Open;
11:45 a.m.–12:05 p.m., Open;
12:05 p.m.–12:15 p.m., Closed;
12:45 p.m.–12:55 p.m., Closed;
12:55 p.m.–3 p.m., Open;
3 p.m.–5 p.m., Open.

September 29, 2005, 8 a.m.–3:30 p.m.,
Sessions:
8:30 a.m.–10 a.m., Open;
10 a.m.–10:30 a.m., Closed;
10:30 a.m.–11 a.m., Open;
11 a.m.–11:15 a.m., Closed;
1 p.m.–1:15 p.m., Executive Closed;
1:15 p.m.–1:30 p.m., Closed;
1:30 p.m.–3:30 p.m., Open.

PLACE: National Science Foundation, 4201 Wilson Blvd, Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

CONTACT INFORMATION: Please refer to the National Science Board Web site (*www.nsf.gov/nsb*) for updated schedule. NSB Office: (703) 292–7000.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, September 28, 2005

Open

Committee on Programs and Plans
Subcommittee on Polar Issues (8:15 a.m.–9 a.m.), Room 1235
- Chair's Remarks and Approval of Minutes
- OPP Director's Report
- Update on Icebreaker Issues
- Antarctic Geological Drilling Project
- Collaboration of Researchers with Native Communities: King Island, Alaska

Education and Human Resources
Subcommittee on S&E Indicators (9:30 a.m.–10:30 a.m.), Room 1235
- Approval of Minutes
- Chairman's Remarks
- Brief Progress Report on Science and Engineering Indicators 2006
- Discussion of Draft Companion Piece
- Contractor Presentation on Indicators

Committee on Programs and Plans Task Force on Transformative Research (10:30 a.m.–11 a.m.), Room 1235
- Approval of Minutes
- Brief Overview of Workshop I: August 12, 2005

- Discussion on Workshop II: December 16, 2005

Joint Session: Committee on Strategy and Budget and Committee on Programs and Plans (11 a.m.–11:45 a.m.), Room 1235
- Centers and the NSF Portfolio
- Funding Rates, Award Size and Duration
- FY 2004 Funding for Highly Successful PIs

Committee on Strategy and Budget (11:45 a.m.–12:05 p.m.), Room 1235
- Approval of August 2005 Minutes
- Discussion of CSB Contribution to Vision for NSF Document
- Status of FY 2006 Budget Request to Congress

Committee on Programs and Plans (12:55 p.m.–3 p.m.), Room 1235
- Approval of Minutes
- Charge to the International Science Effort
- Status Reports
  - Long-Lived Digital Data Collections: Enabling Research and Education in the 21st Century
  - Transformative Research Task Force
  - Subcommittee on Polar Issues
- Process for Sending Information and Actions to CPP & NSB—Revised Guidelines
- Major Research Facilities:
  - Setting Priorities for Large Research Facilities Projects Supported by the National Science Foundation: Final document
  - Facilities Plan
  - Timeline
- Cyberinfrastructure Vision: Continuing Discussion
- Hurricane Research and the Federal Government
- Millennium Ecosystem Assessment

Committee on Education and Human Resources (3 p.m.–5 p.m.), Room 1235
- Approval of August 2005 Minutes
- CEOSE Summary: Decennial and 2004 Biennial Reports to Congress
- NSF Integration of Research and Education
- NSB Commission on Education
- NSB/EHR Committee's Contribution to Board's Vision for NSF
- NSB Items
- Subcommittee on Science and Engineering Indicators
- Update on Workshop on ''Engineering Workforce Issues and Engineering Education: What are the Linkages?''

Closed

Committee on Programs and Plans Subcommittee on Polar Issues (9 a.m.–9:30 a.m.), Room 1235
- NSB Action Item

Committee on Strategy and Budget (12:05 p.m.–12:15 p.m.), Room 1235
- Status of FY 2007 Budget Submission to OMB

Committee on Programs and Plans (12:45 p.m.–12:55 p.m.), Room 1235
- NSB Action Item

Thursday, September 29, 2005

Open

Committee on Audit and Oversight (8:30 a.m.–10 a.m.), Room 1235
- Approval of August 2005 Minutes
- Discussion and Committee Approval of NSF Merit Review System Review
- Discussion of NSF Vision Document: NSB Roles and Responsibilities
- Committee Approval of NSB Policy Statement on Respective Roles of the OIG and NSF Management in the Pursuit and Settlement of Administrative Investigatory Matters
- CFO Update
- OIG FY 2006 Audit Plan

Executive Committee (10:30 a.m.–11 a.m.), Room 1235
- Approval of August 2005 Minutes
- Updates or New Business from Committee Members
- Update on 2006 NSB Retreat and Off-Site Visit
- Presentation on NSF Sexual Harassment Policies

Closed Session

Committee on Audit and Oversight (10 a.m.–10:30 a.m.), Room 1235
- Pending Investigations

Executive Committee (11 a.m.–11:15 a.m.), Room 1235
- Board Member Proposal
- Director's Items
  - Specific Personnel Matters
  - Future Budgets

Plenary Session of the Board (1 p.m.–3:30 p.m.)

Executive Closed Session (1 p.m.–1:15 p.m.), Room 1235
- Approval of August 2005 Executive Closed Minutes
- Board Member Proposal

Closed Session (1:15 p.m.–1:30 p.m.), Room 1235
- Approval of August 2005 Closed Session Minutes
- Closed Committee Reports
  - Awards and Resolutions

Open Session (1:30 p.m.–3:30 p.m.), Room 1235
- Approval of August 2005 Minutes
- Resolution to Close November–December 2005
- Chairman's Report
- Director's Report
  - NSF Congressional Update
- Committee Reports

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–19083 Filed 9–20–05; 3:34 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (the licensee) to withdraw its July 25, 2003, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit No. 1 (FCS), located in Washington County, Nebraska.

The proposed amendment would have revised the facility technical specifications pertaining to FCS Technical Specification Section 3.0.2, Table 3–2, Table 3–5, 3.6, 3.7, 3.8, and the Definitions Section. This proposed change would have provided a risk-informed alternative to the existing surveillance interval for the integrated Engineered Safety Features (ESF) and Loss-of-Offsite Power testing required to be performed on each ESF equipment train during each outage. The proposed change would have modified the surveillance interval requirement for these refueling interval surveillance requirements to go to a staggered test basis scheme. Using a staggered test basis, only one train would be tested each refueling outage. Omaha Public Power District stated that this amendment was modeled after the Improved Standard Technical Specifications and is based on a study conducted by the Westinghouse Electric Company, LLC on behalf of the Combustion Engineering Owners Group in topical report WCAP–15830–P, ''Staggered Integrated ESF Testing,'' and Technical Specification Task Force 450.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 19, 2003 (68 FR 49818). However, by letter dated September 9, 2005, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 25, 2003, and the

licensee's letter dated September 9, 2005, which withdrew the application for the 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 Agencywide Documents Access and Management Systems (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.

Alan B. Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18916 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–244]

R.E. Ginna Nuclear Power Plant, LLC, R.E. Ginna Nuclear Power Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–18, issued to R.E. Ginna Nuclear Power Plant, LLC (the licensee), for operation of the R.E. Ginna Nuclear Power Plant (Ginna) located in Wayne County, New York.

The proposed amendment would revise the facility operating license and technical specifications (TSs) to authorize an increase in the maximum steady-state thermal power level at Ginna from 1520 megawatts thermal (MWt) to 1775 MWt, which is a 16.8 percent increase. This increase in power level is generally referred to as an extended power uprate. Specifically, the proposed amendment would change the TSs to revise: (1) The Definition of Rated Thermal Power (RTP), (2) the RTP for the Required Action for Condition O in Limiting Condition for Operation (LCO) 3.3.1, ''Reactor Trip System,'' (3) the Power Range Neutron Flux—High Limiting Safety System Setting, (4) the Reactor Trip System Interlocks—Power Range Neutron Flux, P–8 Limiting Safety System Setting, (5) the RTP reference in Table 3.3.1–1, Footnote (h), (6) the Steam Line Isolation High Steam Flow Limiting Safety System Setting, (7) the Steam Line Isolation High—High Steam Flow Limiting Safety System Setting, (8) decrease the upper lift setting in LCO 3.4.10, ''Pressurizer Safety Valves,'' (9) the required volume in surveillance requirement (SR) 3.7.6.1 for TS 3.7.6, ''Condensate Storage Tanks (CSTs).'' In addition, the proposed amendment would change the TSs to provide margin improvement, but are not part of the extended power uprate (EPU), to revise: (1) The Safety Injection Pressurizer Pressure—Low Limiting Safety System Setting, (2) the Containment Spray Containment Pressure—High High Limiting Safety System Settings for narrow range and wide range, and (3) the Steam Line Isolation Coincident with Tavg-Low Limiting Safety System Setting. The proposed amendment also includes a change to the licensing basis for control room dose for the loss-of-coolant accident and the rod ejection accident dose consequences because of the EPU conditions.

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.

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 public document room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the basis 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 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/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

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 Mr. Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 7, 2005, as supplemented on August 15, 2005, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/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 15th day of September 2005.

For the Nuclear Regulatory Commission.

Patrick D. Milano, Sr.,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18918 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Independent Spent Fuel Storage Installation Issuance of Environmental Assessment and Finding of No Significant Impact Regarding a Proposed Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; Fax number: (301) 415–8555; E-mail: *cmr1@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.44(d)(3), to the Portland General Electric Company (PGE, or the licensee). The requested exemption (in conjunction with a conforming license amendment) would relieve PGE from the requirement to submit an annual radioactive effluent report for the Trojan Independent Spent Fuel Storage Installation (ISFSI). PGE submitted the exemption request by letter dated July 6, 2005, in which it also requested an amendment to the Trojan ISFSI license. Specifically, the amendment requested the deletion of item c. and last sentence of item b., Section 5.5.2 of Technical Specification; ''Radioactive Effluent Control Program'' (Appendix A to License No. SNM–2509). The licensee is currently storing spent nuclear fuel at the Trojan ISFSI on the site of the decommissioned Trojan Nuclear Power Plant in Rainier, Oregon.

Environmental Assessment (EA)

I. Identification of Proposed Action

Portland General Electric (PGE) has requested an exemption and a conforming license amendment to obtain relief from the requirement to submit an annual radioactive effluent release report for the Trojan ISFSI in accordance with 10 CFR 72.44(d). The regulation requires a licensee to include Technical Specifications (TS) regarding radioactive effluents. Specifically, 10 CFR 72.44(d)(3) requires that an annual report be submitted to the NRC specifying the quantity of each of the principal radionuclides released to the environment in liquid and in gaseous effluents during the previous 12 months of ISFSI operation. The proposed action before the NRC is whether to grant the exemption.

In addition to the exemption, PGE has requested a conforming license amendment which will make two deletions from the Trojan ISFSI TS, Appendix A to the Special Nuclear Material License No. 2509 (SNM–2509). Section 5.5.2, Radioactive Effluent Control Program, item c., requires an annual report to be submitted pursuant to 10 CFR 72.44(d)(3). Section 5.5.2, item b., in the last sentence, of the Appendix A to the License No. SNM–2509 states: ''The Trojan ISFSI may be included in the environmental monitoring program for the Trojan Nuclear Plant.'' The amendment would delete these two TS.

The license amendment request is categorically excluded from the need for environmental review under 10 CFR 51.22(c)(10)(ii) and 10 CFR 51.22(c)(11).

II. Need for the Proposed Action

The requirements of 10 CFR 72.44(d)(3) impose certain regulatory obligations, with associated costs, on the licensee. Granting the requested exemption will relieve the licensee from the requirement to submit an annual radioactive effluent release report pursuant to 10 CFR 72.44(d)(3). The requirement to submit an annual radioactive effluent monitoring report is not needed for this facility in its current configuration and is an unnecessary administrative burden. Thus, the licensee will not have to incur the costs associated with preparing and submitting an annual radioactive effluent release report.

III. Environmental Impacts of the Proposed Action

In its Safety Evaluation Report related to the ISFSI license (Safety Evaluation

Report Amendment No. 2 to the SNM–2509 License, October 23, 2002), the staff found that there are no credible scenarios by which liquid or gaseous effluents could be released from the dry shielded canister. The licensee further stated that any concerns over small quantities of gaseous or liquid effluent that may be produced during cask loading and transfer decontamination activities are no longer relevant, since all the spent fuel has been transferred to the ISFSI, and that the Holtec International (Holtec) Multi-Purpose Canister (MPC) used at the Trojan ISFSI is a passive system which, by design, produces no gaseous or liquid effluent.

The staff has determined that the proposed action would not endanger life or property. Further, the staff concludes that there is reasonable assurance that the proposed exemption will have no impact on off-site doses.

The proposed action would not increase the probability or consequences of accidents, no changes would be made to the passive system design resulting in the generation of effluents during fuel storage, and there would be no increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action. Additionally, the proposed action would have no significant non-radiological impacts.

IV. Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the exemption (i.e., the ''no-action'' alternative). Approval or denial of the exemption would result in no change in the environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

V. Agencies and Persons Consulted

The NRC staff prepared this environmental assessment (EA); no other sources were used. On August 29, 2005, the staff discussed the EA by phone call with Mr. Adam Bless of the State of Oregon Department of Energy. The State of Oregon stated to the NRC that they had no comments related to the EA or the Finding of no Significant Impact. The NRC staff has determined that consultation under Section 7 of the Endangered Species Act is not required for this specific exemption, which will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under Section 106 of the National Historic Preservation Act.

VI. Conclusions

The staff has reviewed the exemption request submitted by PGE and has determined that relieving the licensee from the requirement to submit an annual radioactive effluent release report pursuant to 10 CFR 72.44(d)(3) would have no significant impact on the environment.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of granting the exemption will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed exemption is not warranted.

Further Information

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the exemption request dated July 6, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 12th day of September 2005.

For the Nuclear Regulatory Commission.

Robert J. Lewis,

Chief, Licensing Section, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 05–18919 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219]

AmerGen Energy Company, LLC, Oyster Creek Nuclear Generating Station; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

AmerGen Energy Company, LLC (AmerGen) has submitted an application for renewal of Facility Operating License DPR–16 for an additional 20 years of operation at the Oyster Creek Nuclear Generating Station (OCNGS). OCNGS is located along the western shore of Barnegat Bay between the South Branch of Forked River and Oyster Creek, in Ocean County, New Jersey. The operating license for OCNGS expires April 9, 2009. The application for renewal, submitted pursuant to Title 10 of the Code of Federal Regulations Part 54 (10 CFR Part 54), was received on July 22, 2005. A notice of receipt and availability of the application, which included the environmental report (ER), was published in the **Federal Register** on August 4, 2005 (70 FR 44940). A notice of acceptance for docketing of the application for renewal of the facility operating licenses was published in the **Federal Register** on September 15, 2005, (70 FR 54585). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement (EIS) in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with Section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, AmerGen submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR Part 51 and is available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the Public Electronic Reading Room link. Persons

who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/oystercreek.html*. In addition, the Lacey Public Library, 10 East Lacey Road, Forked River, NJ 08731 has made the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's ''Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants'' (NUREG–1437), in support of the review of the application for renewal of the OCNGS operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act of 1969 (NEPA) and the NRC's regulations found in 10 CFR Part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other EISs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, AmerGen Energy Company, LLC.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the OCNGS license renewal supplement to the GEIS. The scoping meetings will be held at the Quality Inn located at 815 Route 37 in Toms River, New Jersey, on Tuesday, November 1, 2005. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (2) the opportunity for interested government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Quality Inn in Toms River. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting NRC Senior Environmental Project Manager, Dr. Michael Masnik, at 1–800–368–5642, extension 1191, or by e-mail to the NRC at *OysterCreekEIS@nrc.gov* no later than October 24, 2005. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Dr. Masnik will need to be contacted no later than October 24, 2005, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the OCNGS license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the NRC, Room T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852–2738, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by November 25, 2005. Electronic comments may be sent by e-mail to the NRC at *OysterCreekEIS@nrc.gov* and should be sent no later than November 25, 2005, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS at *http://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice (70 FR 54585). Matters related to participation in any hearing are outside

the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection in ADAMS at *http://www.nrc.gov/reading-rm/adams.html*. The NRC staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings at a later time. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Dr. Masnik at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 16th day of September 2005.

For the Nuclear Regulatory Commission.

Samson S. Lee,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 05–18915 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on October 6–8, 2005, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Wednesday, November 24, 2004 (69 FR 68412).

Thursday, October 6, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Interim Review of the License Renewal Application for the Browns Ferry Nuclear Plant, Units 1, 2, and 3 (Open)—The Committee will hear presentations by and hold discussions with representatives of the Tennessee Valley Authority and the NRC staff regarding the license renewal application for the Browns Ferry Nuclear Plant, Units 1, 2, and 3 and the NRC staff's Safety Evaluation Report with Open Items.

10:15 a.m.–11:45 a.m.: Proposed Recommendations for Resolving Generic Safety Issue (GSI)–80, ''Pipe Break Effects on Control Rod Drive Hydraulic Lines in the Drywells of Boiling Water Reactor Mark I and II Containments'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the recommendations proposed by the NRC Office of Nuclear Regulatory Research for resolving GSI–80.

12:45 p.m.–2:15 p.m.: Resolution of ACRS Comments on the Draft Final Regulatory Guide, ''Risk-Informed, Performance-Based Fire Protection for Existing Light Water Nuclear Power Plants'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Nuclear Energy Institute (NEI) regarding the changes made to this Guide and to NEI 04–02, ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c),'' in response to the ACRS comments and recommendations included in its June 14, 2005 letter.

2:30 p.m.–4 p.m.: Davis-Besse Reactor Pressure Vessel Head Integrity Calculations (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the expert elicitation and calculations performed for the reactor pressure vessel head integrity of the Davis-Besse Nuclear Power Plant.

4:15 p.m.–5:15 p.m.: Quality Assessment of the Selected NRC Research Program (Open)—The Committee will discuss the results of the cognizant ACRS panel's assessment of the quality of the NRC research projects on: Standardized Plant Analysis Risk (SPAR) Models Development Program; Steam Generator Tube Integrity Program at the Argonne National Laboratory; and the Thermal-Hydraulic Test Program at the Penn State University.

5:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting.

Friday, October 7, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Licensees' Responses to the Bulletin on, ''Emergency Preparedness and Response Actions for Security-Based Events'' (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding licensees' responses to the Bulletin related to Emergency Preparedness and Response Actions for Security-Based Events.

10:15 a.m.–11:15 a.m.: NRC Staff's Response to the ACRS Letter on the Proposed Revision 4 to Regulatory Guide 1.82, ''Water Sources for Long-Term Recirculation Cooling Following a Loss-of-Coolant Accident'' (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the staff's response to the ACRS letter on the Proposed Revision 4 to Regulatory Guide 1.82.

11:15 a.m.–12:15 p.m.: Format and Content of the NRC Safety Research Program Report to the Commission (Open)—The Committee will hear a report by and hold discussions with the Chairman of the ACRS Subcommittee on Safety Research Program regarding the format and content of the ACRS report to the Commission on the NRC Safety Research Program as well as assignments for the ACRS members.

1:15 p.m.–2:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2:15 p.m.–2:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

2:30 p.m.–3 p.m.: Subcommittee Report (Open)—The Committee will hear a report by and hold discussions with the Chairmen of the ACRS Subcommittees on Plant Operations and

Plant License Renewal regarding matters discussed at the September 21, 2005 Subcommittee meeting.

3:15 p.m.–7 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Saturday, October 8, 2005, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12 Noon: Preparation of ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

12 Noon–12:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with Subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information and safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: September 16, 2005.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 05–18913 Filed 9–21–05; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals

(1) *Collection title:* Evidence for Application of Overall Minimum.

(2) *Form(s) submitted:* G–319, G–320.

(3) *OMB Number:* 3220–0083.

(4) *Expiration date of current OMB clearance:* 1/31/2007.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households, Business or other for-profit, Non-profit institutions.

(7) *Estimated annual number of respondents:* 475.

(8) *Total annual responses:* 475.

(9) *Total annual reporting hours:* 170.

(10) *Collection description:* Under Section 3(f)(3) of the Railroad Retirement Act, the total monthly benefits payable to a railroad employee and his family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer (312–751–3363 or *Charles.Mierzwa@RRB.GOV).*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092, or *Ronald.Hodapp@RRB.GOV* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–18928 Filed 9–21–05; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 26, 2005:

A closed meeting will be held on Thursday, September 29, 2005 at 3 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10) permit consideration of the scheduled matters at the closed meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matters of the closed meeting scheduled for Thursday, September 29, 2005 will be:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: September 19, 2005.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–19030 Filed 9–20–05; 11:21 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–28030]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 16, 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 11, 2005 to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After October 11, 2005, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cleco Corporation and Cleco Midstream Resources LLC (70–10318)

Cleco Corporation (''Cleco Corp.''), 2030 Donahue Ferry Road, Pineville, Louisiana, a Louisiana corporation and a holding company claiming exemption from registration under section 3(a)(1) of the Act by rule 2, and its wholly owned-subsidiary at the same address, Cleco Midstream Resources, LLC (''Cleco Midstream'') (''Applicants'') have filed an application (''Application'') under sections 9(a)(2) and 10 of the Act. Applicants seek approval of their proposed acquisition of all of the issued and outstanding membership interests of Attala Transmission, LLC (''Attala'').

Attala is a Louisiana limited liability company that will acquire transmission facilities from Central Mississippi Generating Company, LLC (''Central Mississippi''), an exempt wholesale generator under section 32 of the Act (''EWG''), and thus become a public-utility company. Central Mississippi is currently the owner of a generating plant (''Attala Generating Plant'') located in Attala County, Mississippi, as well as interconnection facilities used to transmit electric energy from the Attala Generating Plant to the transmission system of Entergy Mississippi, Inc. (''Entergy Mississippi''), a public utility subsidiary of Entergy, Inc., a register holding company. Central Mississippi has proposed to sell the Attala Generating Plant to Entergy Mississippi and to sell the interconnection facilities to Attala, which will be formed as a wholly-owned indirect subsidiary of Cleco Corp. and as a direct subsidiary of Cleco Midstream (''Transaction''). Following the closing of the Transaction, Attala will own, operate and maintain the interconnection facilities, and it will use them to provide interconnection service from the Attala Generating Plant to the Entergy Mississippi transmission system, in accordance with a Federal Energy Regulatory Commission (''FERC'') filed rate schedule.

Cleco Corp. is the parent company of Cleco Power LLC (''Cleco Power''), a Louisiana limited liability public-utility company that provides electric utility service in central and southeastern Louisiana.

Cleco Midstream is the parent company of Perryville Energy Holdings LLC which owns Perryville Energy Partners, LLC (''Perryville''), an EWG. Perryville owns a 718-megawatt generating facility as well as interconnection facilities used to connect the facility to the transmission system of Entergy Louisiana (''Entergy LA''). Perryville has entered into an agreement to sell the generating facility to Entergy LA (although it will retain ownership of the interconnection facilities). Following the sale, Perryville will no longer own generating facilities, will cease to qualify as an EWG, and will become a public-utility company, as defined in section 2(a)(5) of the Act. Consequently, when the Transaction is completed, Cleco Midstream will be a holding company with respect to two public-utility companies, Perryville and Attala.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18940 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52460; File No. SR–Amex–2005–088]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Extension of the Suspension of Transaction Charges for Specialist Orders in the Nasdaq-100 Tracking Stock® (QQQQ)

September 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 31, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by Amex. Amex has designated the proposed rule change as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Equity and Exchange Traded

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Funds and Trust Issued Receipts Fee Schedules (the ''Amex Fee Schedules'') to extend the suspension of transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from September 1, 2005 through October 31, 2005. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and from 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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the suspension of transaction charges for specialist orders in QQQQ from September 1, 2005 through October 31, 2005. The current suspension of specialist transaction charges in QQQQ will otherwise terminate on August 31, 2005.[5]

Specialist orders in QQQQ executed on the Exchange currently are charged $0.0037 per share ($0.37 per 100 shares), capped at $300 per trade (81,081 shares). Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® formerly ''QQQ'' transferred its listing from Amex to The Nasdaq Stock Market, Inc (''Nasdaq''). It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ pursuant to unlisted trading privileges.

The Exchange submits that a suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.[6] Specifically, the Exchange believes that extending the suspension of transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members. The fact that specialists have greater obligations than other members and are also subject to other Exchange fees, in addition to transaction fees, supports this proposal to temporarily extend the fee suspension.

The Exchange notes that specialists are also subject to a variety of Exchange fees other than transaction charges, such as a floor clerk fee, a floor facility fee, a post fee, and registration fee.[7] In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.[8] Certain market participants, such as customers, non-member broker-dealers and market-makers, and member broker-dealers are not subject to the majority of these fees. In addition, specialist units, unlike registered traders and other floor members, must be sufficiently staffed and provide adequate technology resources in order to handle the volume of orders (especially in QQQQ) that are sent to the specialist post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists have certain obligations required by Exchange rules as well as the Act that do not exist for other market participants. For example, a specialist pursuant to Amex Rule 170 is required to maintain a fair and orderly market in his or her assigned securities. Other members of the Exchange as well as non-member market participants do not have this obligation. As a result, the Exchange believes that an extension of the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable.

The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be further suspended from September 1, 2005 through October 31, 2005.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(4) of the Act[10] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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–Amex–2005–088 on the subject line.

[5] See Securities Exchange Act Release Nos. 52267 (August 15, 2005), 70 FR 49338 (August 23, 2005) and 52268 (August 15, 2005), 70 FR 49336 (August 23, 2005) (proposals previously introducing and extending this specialist transaction fee waiver).

[6] Section 6(b)(4) states that the rules of a national securities exchange must provide for ''the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.''

[7] The floor clerk, floor facility, post, and registration fees on an annual basis are $900, $2,400, $1,000, and $800, respectively.

[8] A technology fee of $3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–088. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–088 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 05–18939 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52450; File No. SR–DTC–2005–07]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Expand DTC's Inventory Management System

September 15, 2005.

I. Introduction

On July 8, 2005, the Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on July 8, 2005, amended [1] proposed rule change SR–DTC–2005–07 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the **Federal Register** on August 1, 2005.[3] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

DTC is expanding its Inventory Management System (''IMS'') to offer additional customized transaction recycling capabilities and to provide users with an enhanced approval mechanism in order to give users greater internal control over deliveries that they submit to DTC.

Currently, a participant using IMS can prepopulate its profile to customize the position recycle order for its night cycle deliveries. These ''high priority'' transactions are processed in the prescribed order if the participant has sufficient shares in its account. If there are insufficient shares to complete these high priority transactions, then DTC attempts to complete lower prioritized transactions that can be completed with the shares the participant has available.

The rule change: (i) Increases participant control over the processing order by adding two new recycle profiles; (ii) expands the recycle profiles to include Initial Public Offering (''IPO'') transactions; and (iii) allows a participant's input to be subjected to secondary authorization through a new transaction type in IMS.

The new recycle profiles allow participants to further customize the processing of their deliveries by either: (i) Electing to have the deliveries processed in strict profile order or (ii) enabling the participant to hold all or a specific set of deliveries in a separate profile until they are ready to release those transactions for processing. For each delivery that is customized and recycled based upon profile selection, a participant will be charged $0.06 in addition to the applicable delivery fee.

Currently, participants only can route their night delivery orders to IMS for authorization. The rule change allows participants also to submit their manual or automated day delivery orders for authorization based on predetermined profiles. A user can create a profile by asset class and within asset class by input source (*e.g.*, only deliveries submitted by DTC's Participant Browser Service). The user can determine, based on input source, which delivery types (all valued, all free, only under/over valued deliveries) should be routed for authorization. For these deliveries, participants will be charged the current authorization fee of $0.006 each in addition to the applicable delivery fee.

Participants are not required to make any systemic changes and may continue to process their deliveries as they do today. IMS recycle profiles are optional, and users that do not elect to prioritize their deliveries through IMS continue to be subjected to the existing default recycle profile.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to provide for the prompt and accurate clearance and settlement of securities.[4] The Commission finds that DTC's proposed rule change is consistent with this requirement because it will allow participants to have all of their deliveries residing at DTC throughout the day and will maximize their priority deliveries and associated settlement credits. As such, the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions by increasing efficiency of processing participants' transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is 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,[5] that the proposed rule change (File No. SR–

[1] The amendment corrected a typographical error in the original filing.

[2] 15 U.S.C. 78s(b)(1).

[3] Securities Exchange Act Release No. 52123 (July 26, 2005), 70 FR 44132.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

DTC–2005–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18896 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52451; File No. SR–ISE–2005–44]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Primary Market Maker Obligations

September 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Rule 803 regarding Primary Market Maker obligations in consideration of a recently approved change to the ISE Rules relating to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.[5]

The text of the proposed rule change is available on the Exchange's Web site (*http://www.iseoptions.com*), at the Exchange'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 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

In file number SR–ISE–2005–33, which was recently approved by the Commission, the Exchange proposed to amend its rules governing Linkage[6] trading with respect to trade-throughs and locked markets.[7] SR–ISE–2005–33 provided that an Exchange member may trade an order at a price that is one minimum quoting increment inferior to the national best bid and offer (''NBBO'') if the member contemporaneously transmits to the market(s) disseminating the NBBO Linkage Order(s)[8] to satisfy all interest at the NBBO price (''trade and ship''). Under trade and ship, pursuant to agency obligations, any execution the member receives from the market disseminating the NBBO must be reassigned to any customer order underlying the Linkage Order that was transmitted to trade with the market disseminating the NBBO.

The purpose of this proposed rule change is to reflect the change made in SR–ISE–2005–33 in ISE Rule 803(c), which specifies the obligations of a Primary Market Maker when handling a Public Customer Order. Specifically, the Exchange proposes to amend ISE Rule 803(c) to specify that a Primary Market Maker may trade and ship as described above. This proposed rule change is necessary to assure that the Exchange's rules are consistent with respect to the handling of Public Customer Orders.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[9] that an exchange have rules that are 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. In particular, the proposed rule change will help implement the Linkage Plan by facilitating the ability of market makers to execute their customer orders and assuring that the Exchange's rules in this respect are consistent.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change that does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the

[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] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by the American Stock Exchange LLC, the Chicago Board Options Exchange, Incorporated, and the ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (''Linkage Plan''). Subsequently, upon separate requests by the Philadelphia Stock Exchange, Inc., the Pacific Exchange, Inc., and the 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 70851 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004).

[6] The Exchange defines ''Linkage'' in ISE Rule 1900(9).

[7] *See* Securities Exchange Act Release No. 52418 (September 13, 2005) (order approving SR–ISE–2005–33).

[8] The Exchange defines ''Linkage Order'' in ISE Rule 1900(10).

[9] 15 U.S.C. 78f(b)(5).

public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] As required under Rule 19b–4(f)(6)(iii),[12] the Exchange provided the Commission with written notice of the Exchange's intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally may not become operative prior to 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), and designate the proposed rule change operative upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest,[15] because accelerating the operative date immediately eliminates the inconsistency in the Exchange Rules with respect to Primary Market Makers Obligations to Public Customer Orders that otherwise exists as a result of the approval of trade and ship.[16] For this reason, the Commission designates that the proposal is operative upon filing.

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–ISE–2005–44 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–ISE–2005–44 . This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–44 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18895 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For the purpose only 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).

[16] *See supra* note 7.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52430; File No. SR–NASD–2004–162]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish Fee and Notice Requirements for Substitution Listing Events and To Provide Additional Transparency for Changes Requiring a Record-keeping Fee

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 October 26, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On May 11, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] On August 18, 2005, Nasdaq filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposal, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rules 4200(a), 4310, 4320, 4510, and 4520 to establish fee and notice requirements for substitution listing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the filing in its entirety. In Amendment No. 1, Nasdaq clarified that securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities are exempt from the proposed Substitution Listing Event notice and fee requirements. Amendment No. 1 also corrected typographical errors and clarified certain other non-material terms related to the scope of the proposed Substitution Listing Event fee and notice requirements.

[4] Amendment No. 2 superseded and replaced the amended filing in its entirety. In Amendment No. 2, Nasdaq clarified that securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities are exempt from only the proposed Substitution Listing Event fee requirement and, therefore, would be subject to the proposed notice requirement. Amendment No. 2 also made certain conforming changes and representations regarding the collection and dissemination of substitution listing event information and the proposed rules impact on Nasdaq's regulatory functions.

events for all Nasdaq issuers, except the proposed fee will not apply to issuers whose securities are listed on a national securities exchange and subsequently listed on Nasdaq but not designated by Nasdaq as Nasdaq national market system securities. Nasdaq also proposes amendments to provide more transparency regarding certain changes subject to the record-keeping fee. Nasdaq would implement the proposed rule change, as amended, as soon as practicable following Commission approval.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].[5]

* * * * *

4200. Definitions

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)–(36) No change.

(37) *''Substitution Listing Event'' means a reverse stock split, re-incorporation or a change in the issuer's place of organization, the formation of a holding company that replaces a listed company, reclassification or exchange of an issuer's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.*

(38) ''Transaction costs'' means costs incurred in connection with a limited partnership rollup transaction, including printing and mailing the proxy, prospectus or other documents; legal fees not related to the solicitation of votes or tenders; financial advisory fees; investment banking fees; appraisal fees; accounting fees; independent committee expenses; travel expenses; and all other fees related to the preparatory work of the transaction, but not including costs that would have otherwise been incurred by the subject limited partnerships in the ordinary course of business or solicitation expenses.

[(38)]*(39)* ''Underwriting Activity Report'' is a report provided by the Market Regulation Department in connection with a distribution of securities subject to SEC Rule 101 pursuant to Rule 2710(b)(11) and includes forms that are submitted by members to comply with their notification obligations under Rules 4614, 4619, and 4623.

(b) No Change.

* * * * *

4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)–(b) No change.

(c) In addition to the requirements contained in paragraph (a) or (b) above, and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(19) No change.

(20) The issuer shall notify Nasdaq promptly in writing of any change in the general character or nature of its businesses and any change in the address of its principal executive offices. The issuer also shall file on a form designated by Nasdaq notification of any corporate name change, *or other change requiring payment of a record-keeping fee,* no later than 10 days after the change.

(21)–(29) No change.

(30) The issuer shall notify Nasdaq of a Substitution Listing Event (other than a re-incorporation or a change to an issuer's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq. For a re-incorporation or change to an issuer's place of organization, an issuer shall notify Nasdaq as soon as practicable after such event has been implemented by filing the appropriate form as designated by Nasdaq. Issuers shall also pay the appropriate fee associated with Substitution Listing Events. The Substitution Listing Event fee shall not apply to securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities.

(d) No change.

* * * * *

4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depository Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, an American Depository Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change.

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the criteria set out in this subsection for inclusion in Nasdaq. In the case of ADRs, the underlying security will be considered when determining the ADR's qualification for initial or continued inclusion on Nasdaq.

(1)–(17) No change.

(18) The issuer shall notify Nasdaq promptly in writing of any change in the general character or nature of its businesses and any change in the address of its principal executive offices. The issuer also shall file on a form designated by Nasdaq notification of any corporate name change, *or other change requiring payment of a record-keeping fee,* no later than 10 days after the change.

(19)–(25) No change.

(26) The issuer shall notify Nasdaq of a Substitution Listing Event (other than a re-incorporation or a change to an issuer's place of organization) no later than 15 calendar days prior to the implementation of such event by filing the appropriate form as designated by Nasdaq. For a re-incorporation or change to an issuer's place of organization, an issuer shall notify Nasdaq as soon as practicable after such event has been implemented by filing the appropriate form as designated by Nasdaq. Issuers shall also pay the appropriate fee associated with Substitution Listing Events. The Substitution Listing Event fee shall not apply to securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities.

(f) No change.

* * * * *

4510. The Nasdaq National Market

(a)–(d) No change.

(e) Record-Keeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc. *and submit the appropriate form as designated by Nasdaq.*

(f) Substitution Listing Fee

An issuer that implements a Substitution Listing Event shall pay a fee of $7,500 to The Nasdaq Stock Market, Inc. and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities.

[5] Nasdaq represents that changes are marked to the rule text that appears in the electronic NASD Manual found at *http://www.nasd.com.* Nasdaq also represents that there are no pending rule filings that would affect this proposed rule change.

4520. The Nasdaq SmallCap Market

(a)–(c) No change.

(d) Record-Keeping Fee.

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc. *and submit the appropriate form as designated by Nasdaq.*

(e) Substitution Listing Fee.

An issuer that implements a Substitution Listing Event shall pay a fee of $7,500 to The Nasdaq Stock Market, Inc. and submit the appropriate form as designated by Nasdaq. Notwithstanding the foregoing, this substitution listing fee shall not apply to securities that are listed on a national securities exchange and not designated by Nasdaq as Nasdaq national market system securities.

* * * * *

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 proposed rule change, as amended, and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend NASD Rules 4200(a), 4310, 4320, 4510, and 4520 to establish a fee for substitution listing events and a corresponding notice requirement. Substitution listing events include the implementation of a reverse stock split, an issuer's re-incorporation or a change in the issuer's place of organization (including a change in the issuer's state of incorporation), the reclassification or exchange of an issuer's listed shares for another security, formation of a holding company that replaces a listed company, the listing of a new class of securities in substitution for a previously listed class of securities, or any technical change where the shareholders of the original company receive a share-for-share interest in the new company without a change in their equity position or rights.

When Nasdaq learns about a substitution listing event for a Nasdaq-listed company, Nasdaq must implement technical changes to its trading, market data, and internal monitoring systems. Nasdaq disseminates certain substitution listing event information about Nasdaq-listed companies to other markets and market participants through a subscription service.[6] Nasdaq-listed issuers that are designated by Nasdaq pursuant to NASD Rule 4400 Series as Nasdaq national market system securities (''Nasdaq designated securities'') are contacted directly by Nasdaq to verify the details of the substitution listing events. Under the NASD Rule 4400 Series, the securities of certain Nasdaq-listed issuers that are also listed on a national securities exchange are not designated by Nasdaq as Nasdaq national market system securities (''Nasdaq non-designated securities'').[7] Nasdaq does not contact the issuers of Nasdaq non-designated securities directly to verify the details of substitution listing events. Instead, for Nasdaq non-designated securities, Nasdaq receives electronic reports from the national securities exchange that designated the securities as national market system securities[8] under that market's national market system plan. Nasdaq uses these reports to make the necessary changes to its systems.

Nasdaq has dedicated specific resources to manage the process for collecting, verifying, and implementing the changes related to substitution listing events of Nasdaq-listed securities so that such changes are accurately and promptly reflected in its trading, market data, and internal monitoring systems. To support these activities, Nasdaq proposes to establish a fee of $7,500 per event for issuers of Nasdaq designated securities. Since the costs associated with managing the substitution listing events for Nasdaq non-designated securities is reduced through Nasdaq's use of consolidated reports from other markets, the proposed rule would waive the substitution listing event fee for these particular issuers.[9] Waiving these fees also would eliminate the possibility that these issuers would be charged twice for the same substitution listing event since, as discussed below, other markets charge their listed companies a fee for substitution listing events.

Under the proposed rule change, issuers of both Nasdaq designated and Nasdaq non-designated securities would be required to notify Nasdaq about a substitution listing event no later than 15 days prior to the implementation of the event, in order to provide Nasdaq with sufficient time to implement the technical changes into its systems. For a re-incorporation or a change to an issuer's place of organization, however, Nasdaq proposes to require issuers to notify Nasdaq as soon as practicable after the event has been implemented since these substitution listing events may be contingent on shareholder approval and would not require immediate changes to Nasdaq's systems.

Other markets also assess a fee for substitution listing events. For example, both the NYSE and the American Stock Exchange (''Amex'') charge a fee for substitution listing events. The NYSE charges a ''Reduced Initial Fee'' of $15,000 for substitution events.[10] Under the NYSE's rules, the $15,000 fee applies only if the change in the company's status is technical in nature and the shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights. If the substitution event does not

[6] Nasdaq provides advance notification of certain substitution listing events, such as reverse stock splits, to member firms, market data vendors, service bureaus, and other subscribers of its daily list service. Notification of the substitution listing event information on Nasdaq's daily list service is subsequently provided to users of Nasdaq's systems through a fifth letter identifier, such as a ''D,'' that is temporarily added to an issuer's trading symbol. Re-incorporations or changes to the place of organization are recorded in Nasdaq's internal database, but are not disseminated to market participants.

[7] NASD IM–4400 provides that Nasdaq shall not exercise its authority under the NASD Rule 4400 Series separately to designate the securities that are listed on a national securities exchange and subsequently permitted to list on the Nasdaq National Market as Nasdaq national market system securities within the meaning of Section 11A of the Act, 15 U.S.C. 78k–1, or the rules thereunder.

[8] For example, Nasdaq uses electronic reports from the New York Stock Exchange (''NYSE'') to verify the details of the substitution listing events for NYSE-listed securities that are subsequently also listed on Nasdaq but are still designated by the NYSE as national market system securities pursuant to the NYSE's national market system plan. The consolidated reports from the NYSE contain information regarding reverse stock splits, the substitution of a previously listed class of securities for another class, the creation of a holding company, and the reincorporation or change to the place of organization of an issuer.

[9] Although the proposed rule would waive the substitution-listing event fee for these Nasdaq issuers, Nasdaq represents that the lack of such fees from these issuers would not impair Nasdaq's ability to fulfill its regulatory responsibilities and enforce its rules. Furthermore, although Nasdaq relies on consolidated reports in managing the substitution listing events process for these Nasdaq issuers, Nasdaq represents that its rules must be ''designed to produce fair and informative quotations, to prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations'' pursuant to Section 15A(b)(11) of the Act, 15 U.S.C. 78o–3(b)(11).

[10] *See* NYSE Listed Company Manual Section 902.02.

comply with these requirements, the full initial listing fees would apply. Amex charges $5,000 for each substitution listing event.[11] For Amex issuers, a substitution listing fee applies in cases where, after the original listing, a change is made by charter amendment or otherwise by which shares listed on Amex are reclassified, or changed into or exchanged for another security, either with or without a change in par value. Amex also charges a substitution listing fee whenever a company implements a reverse stock split, re-incorporates, lists a new class of securities in substitution of a previously-listed class of securities, or otherwise engages in a transaction which would require the company to file a new Form 8–A with the Commission in regard to the previously listed security.

The proposed rule change also would make minor amendments to NASD Rules 4310(c)(20), 4320(e)(18), 4510(e), and 4520(d) to clarify that Nasdaq-listed companies that are subject to a recordkeeping fee must submit the appropriate form to Nasdaq within 10 days after the change. This proposed change simply reflects the current practice of issuers.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[12] in general, and with Section 15A(b)(5) of the Act,[13] in particular, in that the proposed rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. The proposed rule change is reasonable because the fee is competitive with similar fees charged by other markets. The proposed rule is also equitable because it will apply to all similarly situated Nasdaq issuers on an equal basis. The exemption from the proposed fee requirement for issuers of Nasdaq non-designated securities is equitable and reasonable because it recognizes the reduced costs for managing substitution listing events for such issuers. The exemption is also consistent with the provisions of Section 15A of the Act[14] in that it promotes competition among exchange markets.

The proposed clarifications to NASD Rules 4310(c)(20), 4320(e)(18), 4510(e), and 4520(d) regarding the requisite form to be submitted in connection with payment for a recordkeeping fee is consistent with Section 15A of the Act,[15] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[16] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating and processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. Nasdaq believes that the proposed rule change would benefit issuers and issuers' counsel by providing additional transparency with respect to the process by which issuers request changes covered by the recordkeeping fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in 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 NASD 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, 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–NASD–2004–162 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–NASD–2004–162. 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 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–2004–162 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18897 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* AMEX Company Guide Sections 142 and 305.

[12] 15 U.S.C. 78o–3.

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78o–3.

[15] *Id.*

[16] 15 U.S.C. 78o–3(b)(6).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52449; File No. SR–NASD–2005–107]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Regarding Enhancements to the Nasdaq Market Center Pegged Order Functionality

September 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 8, 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. On September 14, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposed rule change effective upon filing with the Commission.[6] 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 the Substance of the Proposed Rule Change

Nasdaq proposes to modify the order-pegging functionality of the Nasdaq Market Center. Nasdaq intends to implement the proposed rule change immediately and will inform market participants of the exact implementation date via a Head Trader Alert on *http://www.nasdaqtrader.com.*

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

4700. NASDAQ MARKET CENTER—EXECUTION SERVICES

4701. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a)–(jj) No Change.

(kk) The term ''Auto-Ex'' shall mean, for orders in Nasdaq listed securities so designated, an order that (except when it is displayed or interacts with a displayed Discretionary Order at a price in its discretionary price range) will execute solely against the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center. An Auto-Ex Order may be designated as ''Immediate or Cancel'' (an ''IOC Auto-Ex Order'') or ''Day'' or ''GTC'' (a ''Postable Auto-Ex Order''). A party entering a Postable Auto-Ex Order may (but is not required to) specify that the order will utilize the functionality associated with *Pegged Orders or* Discretionary Orders. Auto-Ex orders shall not be eligible for routing as set out in Rule 4714.

(ll) No change.

(mm) The term ''Pegged'' shall mean, for priced limit orders so designated, that after entry into the Nasdaq Market Center, the price of the order is automatically adjusted by Nasdaq Market Center in response to changes in *either* the Nasdaq Market Center inside bid or offer *or the national best bid or offer*, as appropriate. [The] *A* Nasdaq Market Center Participant *may* [entering] *enter either* a *Regular* Pegged Order *or a Reverse Pegged Order. A Nasdaq Market Center Participant entering a Regular Pegged Order* may specify that the price of the order will *deviate from* either [equal] the *Nasdaq* inside quote on the same side of the market *or the national best bid or offer on the same side of the market by an offset amount of $0 to $0.99.* [(a ''Regular Pegged Order'')] *A Nasdaq Market Center Participant entering a Reverse Pegged Order may specify that the price of the order will* [or equal a price that] deviate[s] from *either* the *Nasdaq* inside quote on the contra side of the market *or the national best bid or offer on the contra side of the market* by *an offset amount of* $0.01 *to $0.99* [(i.e., $0.01 less than the inside offer or $0.01 more than the inside bid) (a ''Reverse Pegged Order'')]. The market participant entering a Pegged Order may (but is not required to) specify a cap price, to define a price at which pegging of the order will stop and the order will be permanently converted into an unpegged limit order. Pegged Orders shall not be available for ITS Securities. Pegged orders shall not be eligible for routing as set out in Rule 4714.

(nn) The term ''Discretionary'' shall mean.

(1) For priced limit orders in Nasdaq listed securities so designated, an order that when entered into the Nasdaq Market Center has both a displayed bid or offer price, as well as a non-displayed discretionary price range in which the participant is also willing to buy or sell, if necessary. The displayed price may be fixed or may be pegged to [equal] *deviate from* the *Nasdaq* inside quote *or the national best bid or offer* on the same side of the market *by an offset amount of $0 to $0.99.* The pegging of the Discretionary Order may be capped in the same manner as that of a Pegged Order. The discretionary price range of a Discretionary Order that is pegged will be adjusted to follow the pegged displayed price. Discretionary Orders for Nasdaq listed securities shall be eligible for routing as set out in Rule 4714.

(2) No change.

(oo)–(uu) No change.

* * * * *

4706. Order Entry Parameters

(a) Non-Directed Orders—

(1) General. The following requirements shall apply to Non-Directed Orders Entered by Nasdaq Market Center Participants:

(A)–(B) No change.

(i)–(iv) No change.

(v) For Nasdaq listed securities, an order may be designated as ''Auto-Ex,'' in which case the order may be designated as IOC, Day or GTC. If a Nasdaq Market Center Participant entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with *Pegged or* Discretionary Orders, the order will automatically be designated as Day.

(vi) No change.

(vii) An order may be designated as ''Pegged,'' in which case the order will also automatically be designated as Day. A Pegged Order may not be designated as a Preferenced Order. A Pegged Order (or unexecuted portion thereof) will be retained by the Nasdaq Market Center and its price adjusted in response to changes in the Nasdaq Market Center inside market *or the national best bid or offer, as appropriate.* A Pegged Order (including [a Discretionary Order] *any other order type with a price* that is pegged) will be cancelled if there is no displayable Quote/Order to which its price can be pegged. Starting at 7:30

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made technical changes to the rule text of the proposed rule change and requested that the Commission waive the 30-day operative delay.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] Nasdaq provided the Commission with written notice of its intention to file the proposed rule change on August 16, 2005.

a.m., until the 4:00 p.m. market close, Pegged Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. The initial price of [Pegged Orders (including Discretionary Orders that are pegged)] *any type of order with a price that is pegged* entered prior to market open will be established at 9:30 a.m. based on the Nasdaq inside bid or offer *or the national best bid or offer* at that time*, as appropriate.* Pegged Orders shall not be available for ITS Securities.

To maintain the capacity and performance of the Nasdaq Market Center, Nasdaq may at any time suspend the entry of [Pegged Orders (including Discretionary Orders that are pegged)] *all types of orders with prices that are pegged* for all securities or for any security. Pegged Orders that are in the Nasdaq Market Center at the time of such suspension will continue to be available for adjustment and execution.

(viii) a. An order may be designated as ''Discretionary'', in which case the order will also automatically be designated as Day. A Discretionary Order may not be designated as a Preferenced Order. The order (or unexecuted portion thereof) shall be displayed in the system, if appropriate, using the displayed price selected by the entering party, with the system also retaining a non-displayed discretionary price range within which the entering party is also willing to execute if necessary. If a Discretionary Order is pegged, its displayed price will be adjusted in response to changes in the Nasdaq inside market *or the national best bid or offer, as appropriate.* Starting at 7:30 a.m., until the 4 p.m. market close, Discretionary Orders may be entered into the Nasdaq Market Center (or previously entered orders cancelled), but such orders entered prior to market open will not become available for execution until 9:30 a.m. Eastern Time. Discretionary Orders whose displayed price or discretionary price range does not lock or cross another Quote/Order will be available for execution at 9:30 a.m. All other Discretionary Orders will be added to the time-priority queue described in Rule 4706(a)(1)(F) and (a)(2)(B) and processed by the Nasdaq Market Center at market open.

b. No change.

(ix)–(xiii) No change.

(C)–(F) No Change.

(2) Entry of Non-Directed Orders by Order Entry Firms—In addition to the requirements in paragraph (a)(1) of this rule, the following conditions shall apply to Non-Directed Orders entered by Order Entry Firms:

(A) (i) All Non-Directed orders in Nasdaq listed securities shall be designated as Immediate or Cancel, GTC or Day but shall be required to be entered as Non-Attributable if not entered as IOC. Order Entry Firms may designate orders as ''Pegged'' or ''Discretionary,'' in which case the order will also automatically be designated as Day. Order Entry Firms may also designate orders as ''Auto-Ex,'' in which case the order may be designated as IOC, Day or GTC. If an Order Entry Firm entering a Postable Auto-Ex Order specifies that the order will utilize the functionality associated with *Pegged or* Discretionary Orders, the order will automatically be designated as Day. For IOC orders, if after entry into the Nasdaq Market Center of a Non-Directed Order that is marketable, the order (or the unexecuted portion thereof) becomes non-marketable, the system will return the order (or unexecuted portion thereof) to the entering participant.

(ii) No change.

(B) No change.

(b)–(e) No change.

4707. Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the Nasdaq Market Center, and Order Entry Firms may enter Non-Attributable Orders into the Nasdaq Market Center, subject to the following requirements and conditions:

(1) No change.

(2) Upon entry of a Quote/Order into the system, the Nasdaq Market Center shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rules 4710(b) and 4714. For each subsequent size increase received for an existing quote at a given price, the system will maintain the original time-stamp for the original quantity of the quote and assign a separate time-stamp to that size increase. When [a Pegged Order (including a Discretionary Order that is pegged)]*any type of order with a price that is pegged* is displayed as a Quote/Order, its time-stamp will be updated whenever its price is adjusted.

(3)–(4) No change.

(b)–(f) No change.

* * * * *

4710. Participant Obligations in the Nasdaq Market Center

(a) No change.

(b) Non-Directed Orders

(1) No change.

(A) No change.

(B) No change.

(i) No change.

(ii) Exceptions—The following exceptions shall apply to the above execution parameters:

a.–c. No change.

d. An Auto-Ex Order in a Nasdaq listed security that is designated IOC will interact solely with the Quotes/Orders of Nasdaq Market Center Participants that participate in the automatic execution functionality of the Nasdaq Market Center and that do not charge a separate quote-access fee to Nasdaq Market Center Participants accessing their Quotes/Orders through the Nasdaq Market Center (''Auto-Ex Eligible Participants''). An IOC Auto-Ex Order will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. An IOC Auto-Ex Order (or an unexecuted portion thereof) will be cancelled if it cannot be immediately executed. Upon entry into the Nasdaq Market Center, a Postable Auto-Ex Order will be processed in the same manner as an IOC Auto-Ex Order; provided, however, that if the *Nasdaq Market Center Participant entering the* Postable Auto-Ex Order [includes discretionary prices] *specifies that the order will utilize the functionality associated with Pegged Orders or Discretionary Orders (including pegged Discretionary Orders)*, the order will be processed in the same manner as a *Pegged Order or a* Discretionary Order, but will interact solely with the Quotes/Orders of Auto-Ex Eligible Participants and will not interact with the Quote/Order of an Auto-Ex Eligible Participant if the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant is priced better than the Quote/Order of any Auto-Ex Eligible Participant at that time. Any portion of a Postable Auto-Ex Order that cannot be immediately executed will be displayed, unless it would lock or cross the Quote/Order of a Nasdaq Market Center Participant that is not an Auto-Ex Eligible Participant, in which case the Postable Auto-Ex Order (or any unexecuted portion thereof) will be cancelled. Depending on the functionality specified by the Nasdaq Market Center Participant entering the order, a Postable Auto-Ex Order that is displayed will have the same characteristics and be subject to the same rules as a regular limit order, *a Pegged Order*, or a Discretionary Order.

For purposes of this subclause d., any displayed Discretionary Order that may

be executed against (or delivered to) an Auto-Ex Order at a price in the Discretionary Order's discretionary price range will be deemed to have been entered by an Auto-Ex Eligible Participant.

e.–f. No change.

(C)–(D) No change.

(2)–(8) No change.

(c)–(e) 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, Nasdaq 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. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the past several years, Nasdaq has introduced numerous new order types for use in the Nasdaq Market Center.[7] A Pegged Order is a limit order, the price of which is automatically adjusted to follow the price movements of the inside market. A Regular Pegged Order pegs to the same side of the market it is entered on, while a Reverse Pegged Order pegs to a price that deviates from the opposite side of the market by $0.01. A Discretionary Order allows a market participant to specify both a displayed price and one or more undisplayed discretionary prices at which it is willing to trade. The displayed price can be pegged to follow the inside price on the same side of the market as the order, with discretionary price(s) adjusted to follow changes in the displayed price. Upon entry, the Auto-Ex Order executes solely against the Quotes/Orders of Nasdaq Market Center participants that participate in the system's automatic execution functionality and that do not charge a separate quote-access fee to participants accessing their Quotes/Orders through the Nasdaq Market Center (''Auto-Ex Eligible Participants''). Auto-Ex Orders either cancel after accessing available liquidity (''IOC Auto-Ex Orders'') or post to the Nasdaq Market Center book after accessing available liquidity (''Postable Auto-Ex Orders'').[8]

Currently, market participants using Pegged Orders or Pegged Discretionary Orders have the option only of pegging to the best bid or offer in Nasdaq. To provide market participants with added flexibility in the use of pegged order types, however, Nasdaq is modifying its system to provide the option of pegging orders to the national best bid or offer. In addition, the proposal creates a wider range of offset amounts for use in connection with pegged orders, with a range $0.00 to $0.99 for orders pegged to the same side of the market and $0.01 to $0.99 for orders pegged to the opposite side of the market. Finally, the proposal makes several non-substantive rule-text changes to remove extraneous language relating to pegging functionality being available for discretionary orders, and to make clear the general availability of pegging functionality for orders, including Postable Auto-Ex Orders.

As is currently the case, an order may not be pegged to prices away from the inside market. Thus, by entering a Regular Pegged Order pegged to the national best bid or offer, the market participant would indicate its willingness to provide liquidity at the best price established by any participant in any market trading the stock. By entering a Reverse Pegged Order pegged to the national best bid or offer, the market participant would indicate its willingness to provide liquidity at a price $0.01–$0.99 away from the best price on the opposite side of the market established by any participant in any market trading the stock. As a result, in circumstances where the spread between the national best bid and best offer is greater than $0.01, the entry of a Reverse Pegged Order would establish a new national best price. All other features of these order types, including the ability to place a cap on an order's pegging function, would remain unchanged.

In addition, Nasdaq will allow market participants entering Postable Auto-Ex Orders to specify that an order will use the pegging functionality. An Auto-Ex Order pegged to the Nasdaq inside would function in the same manner as a Pegged Order, since the order would either join the existing Nasdaq inside, establish a new Nasdaq inside, or be executed by (or receive delivery from) a displayed Discretionary Order at its discretionary price. However, an Auto-Ex Order that is pegged to the national best bid or offer may interact with prices already displayed in Nasdaq, in which case the order's Auto-Ex functionality would become relevant. For example, if the Nasdaq inside was $20.00–$20.01, but the national best offer $20.00, an Auto-Ex Order to sell that used regular pegging functionality would initially be priced at $20.00 and would therefore potentially be eligible for execution against the Nasdaq best bid of $20.00. The order would access all liquidity offered by Auto-Ex Eligible Participants at $20.00, and if there was no bid at that price level from a market participant that was not an Auto-Ex Eligible Participant, the order (or unexecuted portion thereof) would be displayed at $20.00. However, if an Order-Delivery ECN (or an auto-ex ECN that charges an access fee) had a bid at $20.00 displayed in the Nasdaq Market Center, the Auto-Ex Order (or unexecuted portion thereof) would be cancelled, because it would lock the ECN's offer if it were displayed.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[10] in general, and with Section 15A(b)(6) of the Act,[11] in particular, in that the proposal 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. The proposed rule change will provide market participants with a voluntary tool to use to offer liquidity at the inside market. Nasdaq notes that the Commission has found similar orders

[7] *See* Securities Exchange Act Release Nos. 48798 (November 17, 2003), 68 FR 66147 (November 25, 2003) (SR–NASD–2003–150) (Pegged Orders); 49085 (January 15, 2004), 69 FR 3412 (January 23, 2004) (SR–NASD–2003–165) (Discretionary Orders); 49020 (January 5, 2004), 69 FR 1769 (January 12, 2004) (SR–NASD–2003–143) (IOC Auto-Ex Orders); 49547 (April 9, 2004), 69 FR 20091 (April 15, 2004) (SR–NASD–2004–046 (Postable Auto-Ex Orders).

[8] A Postable Auto-Ex Order that would lock or cross the Quote/Order of a participant that is not an Auto-Ex Eligible Participant is cancelled, however.

[9] Similarly, an Auto-Ex Order to sell that used reverse pegging functionality would initially be priced at $19.99 and would therefore access liquidity from Auto-Ex Eligible Participants at $20 and possibly also $19.99.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(6).

offered by at least one other market center to be consistent with the Act.[12]

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, as amended: (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) [13] of the Act and Rule 19b–4(f)(6) thereunder.[14]

Nasdaq has requested that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[15] and designate the proposed rule change to become operative upon filing with the Commission. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is similar to order types already in use in the marketplace. Therefore the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

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.[17]

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–2005–107 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–NASD–2005–107. 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–2005–107 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18898 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

[12] Securities Exchange Act Release No. 47467 (March 7, 2003), 68 FR 12134 (March 13, 2003) (SR–PCX–2002–75).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

[17] The effective date of the original proposed rule is September 8, 2005. The effective date of Amendment No. 1 is September 14, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on September 14, 2005, the date on which Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 52448; File No. SR–Phlx–2005–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, and 3 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of New Rules That Would Establish an Automated Opening System on the Exchange

September 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 21, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change. The Exchange submitted Amendment No. 1,[3] Amendment No. 2,[4] and Amendment No. 3 [5] to its proposal on June 1, 2005, September 1, 2005, and September 14, 2005, respectively. The proposed rule change, as amended, is described in Items I, II, and III, below, which Items have been prepared by the Phlx. 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 Phlx proposes to adopt new rules that would establish an automated opening system on the Exchange. The Exchange also proposes to make

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated June 1, 2005 (''Amendment No. 1''). Amendment No. 1 replaced the original filing in its entirety.

[4] *See* Form 19b–4, dated September 1, 2005 (''Amendment No. 2''). Amendment No. 2 replaced Amendment No. 1 in its entirety.

[5] *See* Form 19b–4, dated September 14, 2005 (''Amendment No. 3''). In Amendment No. 3, Phlx, in part, deleted proposed rule text to clarify that during a manual opening all market orders are to be executed at one price.

conforming amendments to various existing rules and Option Floor Procedure Advices (''OFPAs''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.phlx.com*), at the Exchange'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 Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx 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 increase the number of option orders and transactions handled and executed electronically on the Exchange by establishing a fully automated opening system.

Background

In July, 2004, the Exchange began trading options on its new electronic options trading platform, Phlx XL.[6] Because Phlx XL does not currently include an automated opening functionality, specialists are currently required to open option series manually. The proposed rule change would establish a fully automated opening system for options traded on Phlx XL[7] as part of the Phlx XL system.

Pre-Opening

For a period of time before the scheduled opening in the underlying security (and not less than one hour as determined by the Options Committee with notice to the membership via Exchange circular), Phlx XL will accept orders and quotes during the ''Pre-Opening Phase.'' The Phlx XL system will disseminate to specialists, Streaming Quote Traders (''SQTs''),[8] Remote Streaming Quote Traders (''RSQTs''),[9] and non-SQT ROTs[10] who are required to submit continuous two-sided electronic quotations pursuant to Exchange Rule 1014(b)(ii)(E)[11] (collectively, for purposes of proposed Rule 1017, ''Phlx XL participants'') information about resting orders on the book that remain from the previous trading session and orders submitted prior to the opening.

The purpose of this provision is to establish that a pre-opening phase must occur each day and to make Exchange members and member organizations aware of the time the Exchange will begin accepting pre-opening orders and quotes.

A further purpose of this provision is to establish by rule that the Exchange will provide information to Phlx XL participants about orders on the limit order book during the pre-opening phase. Such information would include, without limitation, the option symbol, the limit price and the size of the limit order, the terms of the order (*i.e.*, day, good-till-cancelled), buy or sell, call or put, and any other conditions applicable to the limit order.

Calculation of Opening Price

The system will calculate an Anticipated Opening Price (''AOP'') and Anticipated Opening Size (''AOS'') when a quote or trade has been disseminated by the primary market for the underlying security, and under the conditions set forth below. The specialist assigned in the particular option must enter opening quotes not later than one minute following the dissemination of a quote or trade by the primary market for the underlying security. The purpose of this provision is to ensure that the specialist is able to accurately quote the option overlying the underlying security once such underlying security has opened, and to ensure that the specialist promptly satisfies his or her quoting obligations established under Exchange rules.[12] The specialist may submit opening quotes prior to this time; the proposed rule is intended to establish the time within which the specialist must submit opening quotes and not to preclude the specialist from submitting such quotes prior to that time.

An AOP may only be calculated if: (i) the Exchange has received market orders, or the book is crossed (highest bid is higher than the lowest offer) or locked (highest bid equals the lowest offer); and (ii) either (A) the specialist's quote has been submitted; (B) the quotes of at least two Phlx XL participants that are required to submit continuous, two-sided quotes in 100% of the series in all option issues in which such Phlx XL participant is assigned (''100% participants''),[13] have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to the membership via Exchange Circular); or (C) if neither the specialist's quote nor the quotes of two 100% participants have been submitted within two minutes of the opening trade or quote on the primary market for the underlying security (or such shorter time as determined by the Options Committee and disseminated to the membership via Exchange Circular), one 100% participant has submitted their quote.

The purpose of this provision is to ensure that the affected series will open regardless of whether the specialist has submitted a quotation (the specialist may not submit his or her quote due to, for example, system malfunctions), provided that a 100% participant is quoting in the affected series. The

[6] *See* Securities Exchange Act Release No. 50100 (July 27, 2004), 69 FR 44612 (August 3, 2004) (SR–Phlx–2003–59).

[7] Currently, all equity and index options, and options overlying Exchange Traded Fund Shares (''ETFs'') that are listed on the Exchange are traded on Phlx XL.

[8] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[9] An RSQT is a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[10] A non-SQT ROT is a ROT who is neither an SQT nor an RSQT. *See* Exchange Rule 1014(b)(ii)(C).

[11] Exchange Rule 1014(b)(ii)(E) requires non-SQT ROTs who transact more than 20% of their contract volume in an option electronically versus in open outcry during a particular calendar quarter to submit proprietary electronic quotations in such an option during the subsequent calendar quarter for a certain number of series in such option, depending on the percent of total volume transacted electronically versus in open outcry on the Exchange in such option.

[12] Exchange Rule 1014(B)(ii)(D) requires specialists to quote continuous, two-sided markets in not less than 100% of the series in each Streaming Quote Option in which such specialist is assigned, and requires an SQT and an RSQT quote continuous, two-sided markets in not less than 60% of the series in each Streaming Quote Option (as defined in Rule 1080(k)) in which such SQT or RSQT is assigned.

[13] An example of a 100% participant is a new category of ROT on the Exchange known as a ''Directed SQT'' or a ''Directed RSQT,'' defined as an SQT or RSQT that receives a Directed Order. *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (SR–Phlx–2004–91).

Exchange believes that when a Phlx XL participant is quoting in 100% of the series in a particular option, the series should be opened as soon as possible regardless of whether the specialist has submitted a quotation.[14] The 100% participant's quotations enable the Exchange to disseminate continuous quotations in each underlying option series, thus ensuring that the Exchange will provide liquid markets in such series once the series has opened.

Opening Order/Quote Imbalance

In situations where an AOP may be calculated (*i.e.*, when the conditions described above are present) and there is an order/quote imbalance, the system will immediately send an imbalance notice indicating the imbalance side (buy or sell) and the AOP and AOS (an ''Imbalance Notice'') to Phlx XL participants provided that the primary market for the underlying security has disseminated the opening quote or trade. Phlx XL participants that have not submitted opening quotes will then submit their opening quotes and Phlx XL participants that have submitted opening quotes may submit revised opening quotes,[15] and thereafter the system will disseminate an updated Imbalance Notice every five seconds (or such shorter period as determined by the Options Committee and disseminated to membership via Exchange Circular) until the series is open. If no imbalance exists, no Imbalance Notice will be sent, and the system will establish an opening price as described below.

The system will calculate the AOP and AOS based on quotes, market orders and current resting orders on the limit order book. The Exchange believes that the calculation and dissemination of the AOP and AOS to Phlx XL participants should provide such Phlx XL participants with sufficient information to determine whether or not to submit revised quotations in order to participate in the opening, based on the dynamic movement of the AOS as additional quotes and market orders are received.

Actual Opening Price

The proposal would establish the opening price of a series in situations where there is no opening quote/order imbalance. Proposed Rule 1017(c)(i) would define the opening price as the price at which the maximum quantity of contracts will be traded. Because the Exchange believes that an option series should open if at all possible to ensure fair and orderly markets in such series, the proposed rule would establish a series of ''tie-breakers'' that the system will follow in establishing the opening price when two or more prices would satisfy the maximum quantity criteria. Specifically, when two or more prices would be the price at which the maximum quantity of contracts will be traded, the system will establish the opening price based on the following criteria, in order: (1) The price at which the greatest number of customer orders will be traded; (2) the price at which the maximum number of Phlx XL participants will trade; and, should there continue to be two or more prices that satisfy the maximum quantity criteria, the opening price will be (3) the price that is closest to the closing price from the previous trading session.

The Exchange believes that the third ''tie-breaker,'' specifying that the opening price would be the price at which the greatest number of Phlx XL participants will trade (once it is established that the opening price would be the price at which the maximum quantity of contracts and the greatest number of customer orders will trade) should ensure that the opening price would reflect the actual state of the market, *i.e.*, the price at which more Phlx XL participants are willing to trade.

The Exchange believes that these ''tie-breaking'' rules should enable the Exchange to open trading expeditiously in a series despite the fact that there may be two or more prices that would result in the maximum quantity of contracts being traded under a variety of scenarios, which the system will account for in automatically determining an opening price.

Priority on Openings

The system will give priority to market orders first (including a limit order to buy which is at a higher price than the price at which the option is to be opened and a limit order to sell which is at a lower price than the price at which the option is to be opened, which will be treated as market orders), then to resting limit orders at the opening price. The purpose of this provision is to ensure that the maximum number of contracts trade at the opening price. The inclusion of limit orders that are at a better price than the opening price in the pool of market orders should ensure that all such orders trade at the opening price before limit orders with a limit price that is equal to the opening price.

Contingency, Hedge, and Synthetic Option Orders

Contingency Orders, Hedge Orders, and Synthetic Option Orders, as defined in Exchange Rule 1066, are not considered in the determination of the opening price, and do not participate in the opening trade because such order types generally include two or more option components, and may also include a stock component.

Floor-Brokered Orders

To be considered in the determination of the opening price and to participate in the opening trade, orders represented by Floor Brokers must be entered onto the book electronically. The purpose of this provision is to ensure that limit orders represented by Floor Brokers at the opening are captured electronically at the opening price for inclusion in the opening.[16] Otherwise, a limit order held by a Floor Broker in the trading crowd that is not placed onto the limit order book electronically would not be included in the automated opening because such a limit order would not be incorporated into the Phlx XL system.

Inbound Orders and Quotes Received While the System Completes the Opening Trade

Inbound orders and quotes will not be included in the calculation of the opening price for a brief period established by the system (and thus not within the discretion of any Phlx XL participant) while the system is in the process of completing the opening trade. During such brief period, such inbound orders and quotes will be entered into the Phlx XL system in order of their arrival. The purpose of the brief interval during which such inbound quotes and orders will not be included in the calculation of the opening price is to allow the system to calculate the opening price after the underlying security opens in the primary market using the quotes and orders received up to the time of the brief interval, so that dynamic quotations and orders received while the system is calculating the opening price do not have the effect of

[14] A specialist that fails to submit opening quotes within one minute of the opening on the primary market would be subject to possible disciplinary action.

[15] Telephone conversation between Richard S. Rudolph, Vice President and Counsel, Phlx, and Terri L. Evans, Special Counsel, Division of Market Regulation (''Division''), on September 6, 2005 (clarifying that Phlx XL participants that have previously submitted opening quotes may submit revised quotes).

[16] In January, 2005, the Exchange adopted rules regarding the immediate display of limit orders, requiring Floor Brokers and Registered Options Traders that wish to place limit orders onto the limit order book to do so electronically. *See* Securities Exchange Act Release No. 51064 (January 21, 2005), 70 FR 4180 (January 28, 2005) (SR–Phlx–2004–73). *See also*, Exchange Rules 1080, Commentary .02; 1014, Commentary .18; and 1063, Commentary .01.

continually changing the calculated opening price. If there were no such brief interval, it is possible that such dynamic quotes and orders, if not excluded, could cause the series never to open because the system could continue to calculate the opening price indefinitely.

Proposed Rule 1017(d) would provide that, as the opening price is determined by series, the system will disseminate through OPRA the opening trade price, if any, and then the quote after the series is open. The system will process and open the series for a given option in random order. If there are no orders in a particular series when the underlying security opens, the Exchange will disseminate quotations at the best bid and offer in such series submitted by Phlx XL participants assigned in the particular option.

Situations in Which the Option Series Will Not Open

The proposed rule would set forth three conditions under which the system will not open a series.

First, the system will not open a series when there is no quote from the specialist or a 100% participant. The purpose of this provision is to ensure that a series will not open if there is no Phlx XL participant that is providing continuous, two-sided quotations in a particular series.

Second, the system will not open a series when the opening price is not within an acceptable range (as determined by the Options Committee and announced to Exchange members and member organizations by way of Exchange Circular) compared to the highest offer and the lowest bid (*e.g.*, the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid). This is to provide a limitation on the range of the opening price in an option so that it is reasonably aligned with the opening price in the underlying security, and so that the opening price does not fall significantly outside of the bids/offers entered during the pre-opening phase. The Exchange proposes a similar conforming amendment to Commentary .15 to Exchange Rule 1014.

Third, the system will not open a series when the opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders, market orders and quotes on the other side of the market). This is to ensure that no market orders that would be eligible for execution at the opening price would be left unexecuted, while other market orders receive executions.

No Specialist or 100% Participant Quote or Quote Outside Acceptable Range

If the specialist or a Phlx XL participant with a 100% quoting requirement is not quoting as described in proposed Rule 1017(e)(i), or if the opening price is not within an acceptable range as described in proposed Rule 1017(e)(ii), proposed Rule 1017(f) would provide that two Floor Officials may authorize the manual opening of the affected series where necessary to ensure a fair and orderly market. In such a circumstance, the Exchange's existing rules concerning manual openings would apply.[17]

Manual Opening by Specialist

Proposed Rule 1017(g)(i) would provide that if a condition or the absence of a required condition not otherwise covered by the proposed rule would prevent an opening trade to occur, the specialist may, with prior notification to Market Surveillance staff, determine to open a series manually in the interest of a fair and orderly market, subject to the approval of two Floor Officials within five minutes of the opening of the affected series. Manual openings would be required to be conducted in accordance with current Commentary .01–.03 of Exchange Rule 1017.

A further purpose of this provision is to enable the specialist to conduct a manual opening in a timely fashion without undertaking the time-consuming burden of seeking out two Floor Officials prior to such manual opening. If the specialist were required to do so, it is highly likely that the time required to seek approval of two Floor Officials would unduly delay such a manual opening. The Exchange believes that the required prior notification to Market Surveillance staff, coupled with the requirement to obtain the approval of two Floor Officials within five minutes of the opening of the affected series, provides the Exchange with sufficient regulatory oversight to monitor such activity. A specialist would be subject to disciplinary action if it is determined that the specialist violated the rule.

As a housekeeping matter, to conform the existing rule to current Exchange definitions, Commentary .03 to Exchange Rule 1017 would be amended to provide that Contingency Orders, Hedge Orders, and Synthetic Option Orders, as defined in Exchange Rule 1066 do not participate in opening rotations or in the determination of an opening price.

Index Options

Respecting options overlying an index, the proposal would permit the specialist to engage the automated opening system to open such options when at least 50% of the current index value of all the securities underlying the index have opened for trading on the primary market. This is consistent with current Exchange rules concerning the manual opening and re-opening of Industry Index options (as defined below).[18]

The Exchange notes that current Exchange Rule 1047A and OFPA G–2, respecting the opening of index options, distinguish between an Industry Index,[19] which as stated above, may be opened when at least 50% of the current index value of all the securities underlying the index have opened for trading on the primary market, and which must currently be opened when at least 90% of the current index value of all the securities underlying the index have opened for trading on the primary market; and a Market Index[20] by requiring the opening rotation for Market Index options to be held at or as soon as practicable after the opening of business on the Exchange, with no similar requirements as to the percentage of the current index value of all the securities underlying the index which must be opened for the option overlying such index to open. The proposal would apply this distinction respecting manual openings only, whereas the system will not make a distinction between an Industry Index option and a Market Index option in determining to open such an option automatically based on the percentage of the current index value of all the securities underlying the index that must be opened.

Under the proposal, with respect to automated openings in an Industry or Market Index conducted pursuant to Rule 1017, the specialist may engage the automated opening system to open such options when underlying securities representing 50% of the current index value of all the securities underlying the index have opened for trading on the

[17] *See, e.g.*, the Commentary to Rule 1017, Rules 1047, 1047A, and OFPAs A–12, A–14 and G–2.

[18] *See* Exchange Rule 1047A(a)(i) and OFPA G–2.

[19] An Industry Index is defined as an index designed to be representative of price movements in particular categories of stocks. *See* Exchange Rule 1000A(b)(11).

[20] A Market Index an index designed to be representative of general price movements in the stock market. *Id.*

primary market. The Exchange proposes to amend Rule 1047A and OFPA G–2 to require the opening of an Industry Index when 100% of the current index value of all the securities underlying the index have opened for trading on the primary market. The system thus will automatically open all index options when underlying securities representing 100% of the current index value of all the securities underlying the index have opened for trading on the primary market.

Therefore, when at least 50% of the current index value of all the securities underlying an index have opened for trading on the primary market, the specialist may determine to engage the automated opening system to open it for trading; when 100% of the current index value of all the securities underlying an index have opened for trading on the primary market, the system will automatically open it for trading.

Reopening Following a Trading Halt

The procedure described in the proposed Rule may be used to reopen an option after a trading halt.

Conforming Amendments to Current Exchange Rules and OFPAs

The Exchange proposes to delete Commentary .03(d)(iii) from Exchange Rule 1017, which currently states that the specialist will not open a series when there is a market on opening order with no corresponding order. The Exchange currently does not accept market on opening orders and thus Commentary .03(d)(iii) is unnecessary.

In addition to the proposed amendments to Exchange Rule 1017, the Exchange is proposing various conforming amendments to current Exchange rules and OFPAs that relate to openings and re-openings following a trading halt.

The Exchange proposes to amend Exchange Rule 1047, Trading Rotations, Halts and Suspensions, to reflect an automated opening conducted pursuant to Exchange Rule 1017 shall be considered a ''trading rotation'' for purposes of these rules. Thus, any requirement to conduct a rotation under the rule could be fulfilled by initiating an automated opening or re-opening by the system.

Exchange Rule 1047(c) would be amended to reflect that two Floor Officials (with the concurrence of a Market Surveillance officer (and not the appropriate Floor Standing Committee as reflected in the current rule) would have the authority, respecting a particular class or series of options, to delay the opening, to halt and reopen after a halt, to open where the underlying stock or ETF has not opened. The Exchange believes that it is more expedient and less cumbersome for two Floor Officials to make such decisions, rather than convening the full Committee to make such a decision.

Exchange Rule 1047 would be further amended to delete all references to the Series Opening Request Ticket (''SORT'') Procedure,[21] an obsolete procedure that is no longer in use on the Exchange. The Exchange proposes a similar amendment to OFPA A–12 Opening Rotations and SORT Procedures.

Commentary .02 to Exchange Rule 1047 would be amended to require the specialist to inform the Market Surveillance staff in the event that trading in an underlying stock or Exchange-Traded Fund Share has not opened in the primary market for such stock or Exchange-Traded Fund Share within a reasonable time after the opening of business, or, in the event that current quotations for any underlying foreign currency are for any reason unavailable. The purpose of this proposed amendment is to clarify that the Market Surveillance staff would then take the appropriate steps to determine the cause of such delay or unavailability, rather than the chairman of the appropriate Floor Standing Committee or his delegate on the floor, as the rule currently provides. The Exchange believes that it is more practical and efficient for the specialist to report any such delay or unavailability to the Market Surveillance staff, who are located on the floor and are readily available to the specialist in such circumstances.

The Exchange also proposes to amend Exchange Rule 1047A, Trading Rotations, Halts or Reopenings, which governs index options. As described above, one substantive change involves the current requirement to open an Industry Index option when underlying securities representing 90% of the current index value of all the securities underlying the index have opened for trading on the primary market. The Exchange proposes to amend this provision to require the opening of an index when 100% of the current index value of all the securities underlying the index have opened for trading on the primary market. The purpose of this proposal is to eliminate any uncertainty as to what the underlying index value would be once the remaining 10% of the underlying index value has opened on the primary market, thus enabling the specialist to price the option overlying the index accurately and with a reasonable degree of certainty.

For clarity, the sentence providing that it is the responsibility of the specialist to arrange the price at which an option series opens and re-opens on the Exchange would be deleted, as this provision is currently found and will be retained in Commentary .03 to Exchange Rule 1017 concerning manual openings, and the system, not the specialist, would establish the opening price in an automated opening.

For consistency, OFPA A–12 would be amended to establish that the acceptable range within which the opening price must be established, would apply to both automated openings and manual openings conducted pursuant to Exchange Rule 1017 and the Commentary thereto. A similar amendment is proposed respecting OFPA A–14, Equity Option and Index Option Opening Parameters.

OFPA G–2, Trading Rotations, Halts or Reopenings, would be amended to reflect that an Industry Index option must open once the underlying securities representing 100% (a proposed increase from 90%) of the current index value of all the securities underlying the index have opened for trading on the primary market, and that respecting automated openings the system will automatically open an index when 100% of the current index value of all the securities underlying the index have opened for trading on the primary market. The OFPA would continue to provide that the specialist in an Industry Index option may conduct a manual opening rotation or may engage the system for an automated opening in such option when 50% of the current index value of all the securities underlying the index have opened for trading on the primary market (either by way of a manual rotation or by engaging the system). The Exchange also proposes to delete references to Super Cap Index options from OFPA G–2, because the Exchange no longer lists this product.

Exchange Rules 1047 and 1047A, and OFPAs A–12 and G–2 would be amended to include the provision that an automated opening conducted pursuant to Exchange Rule 1017 would be considered a ''rotation'' for purposes

[21] A SORT opening, which is no longer implemented on the Exchange, was one where the specialist opened all series in an options class simultaneously after rotating only those series for which a SORT was received. The SORT is a form that was submitted by a member with interest in a particular series to the specialist, at least five minutes prior to the opening of trading, and signaled the specialist to rotate that series. Prior to conducting a SORT procedure, the specialist would announce to the crowd that such a procedure was to be utilized, and in which series, if any, a SORT had been received.

of the rules and OFPAs. Finally, these rules would also be amended to include the term ''Market Surveillance officer'' to conform to the current Exchange staff structure.

Deployment of the Automated Opening System

The Exchange will deploy the automated opening system on an issue-by-issue basis. The Exchange anticipates that at least 10 issues will be deployed on the system within four weeks from the date of approval of the rules relating to the system by the Commission, and that the system will be deployed for all options traded on the Exchange within twelve weeks of such approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [22] in general, and furthers the objectives of Section 6(b)(5) of the Act [23] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and, in general, to protect investors and the public interest, by establishing rules for an automated opening system, thereby increasing the number of option orders handled electronically on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[24]

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–2005–25 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–Phlx–2005–25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–25 and should be submitted on or before October 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–18899 Filed 9–21–05; 8:45 am]

BILLING CODE 8010–01–P

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] Telephone conversation between Richard S. Rudolph, Vice President and Counsel, Phlx, and Terri L. Evans, Special Counsel, Division, Commission on September 14, 2005 (clarifying Phlx's statement on burden on competition).

[25] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners SBIC II, L.P. (''Applicant''), One Riverchase Parkway South, Birmingham, AL 35244, an SBIC Applicant under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest, of the Small Business Administration (''SBA'') rules and regulations (13 CFR 107.730 (2004)). Harbert Mezzanine Partners SBIC II, L.P. proposes to provide financing in the form of subordinated debt and Series B convertible preferred stock to Optical Experts Manufacturing, Inc. (''OEM''), 8500 Tyron Street, Charlotte, NC 28273. The proceeds will be used to finance the recapitalization of OEM.

This investment requires an exemption from the prohibitions in 13 CFR 107.730, Conflicts of Interest, because OEM is an Associate of the Applicant by virtue of the greater than 10 percent ownership interest held by Harbinger Mezzanine Partners, L.P. (''Harbinger'').

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzman-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–18888 Filed 9–21–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Audit and Financial Management Advisory (AFMAC)

Committee Meeting

The U.S. Small Business Administration's Audit and Financial

Management Advisory Committee (AFMAC) will host a public meeting on Friday, September 23, 2005. The meeting will be take place at the U.S. Small Business Administration, 409 3rd Street, SW., Office of Chief Financial Officer Conference Room, 6th Floor, Washington, DC 20416. The AFMAC was established by the Administrator of the SBA to provide recommendation and advice regarding the Agency's financial management including the financial reporting process, systems of internal controls, audit process and process for monitoring compliance with relevant laws and regulations.

Anyone wishing to attend must contact Thomas Dumaresq in writing or by fax. Thomas Dumaresq, Chief Financial Officer , 409 3rd Street SW., Washington DC 20416, phone (202) 205–6506, fax: (202) 205–6869, e-mail: *thomas.dumaresq@sba.gov.*

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–18889 Filed 9–21–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Social Security Acquiescence Ruling 05–1(9); Gillett-Netting v. Barnhart; Application of State Law and the Social Security Act in Determining Eligibility for a Child Conceived By Artificial Means After an Insured Individual's Death—Title II of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 05–1(9).

EFFECTIVE DATE: September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Aviles, Office of the General Counsel, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3457, or TTY (800) 966–5609.

SUPPLEMENTARY INFORMATION: We are publishing this acquiescence ruling in accordance with 20 CFR 402.35(b)(2).

An acquiescence ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the court of appeals' decision as explained in this acquiescence ruling to claims at all levels of administrative review within the Ninth Circuit. This acquiescence ruling will apply to all determinations or decisions made on or after September 22, 2005. If we made a determination or decision on your application for benefits between June 9, 2004, the date of the court of appeals' decision, and September 22, 2005, the effective date of this acquiescence ruling, you may request application of the acquiescence ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2), that application of this acquiescence ruling could change our prior determination or decision in your claim.

Additionally, when we received this precedential court of appeals' decision and determined that an acquiescence ruling might be required, we began to identify those claims that were pending before us within the circuit that might be subject to readjudication should we decide to issue an acquiescence ruling. Because an acquiescence ruling is required, we will send a notice to those individuals whose claims may be affected by the acquiescence ruling. The notice will provide information about this ruling and the right to request readjudication under it. It is not necessary for an individual to receive a notice in order to request application of this acquiescence ruling to the prior determination or decision on his or her claim.

If this acquiescence ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e). If we decide to relitigate the issue covered by this acquiescence ruling as provided for by 20 CFR 404.985(c), we will publish a notice in the **Federal Register** stating that we will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: August 24, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

Acquiescence Ruling 05–1(9)

Gillett-Netting v. *Barnhart*, 371 F.3d 593 (9th Cir. 2004), reh'g denied (9th Cir. Dec. 14, 2004)—Applicability of State Law and the Social Security Act in Determining Whether a Child Conceived By Artificial Means after an Insured Person's Death is Eligible for Child's Insurance Benefits—Title II of the Social Security Act.

Issues: Whether a child conceived by artificial means after the death of the insured is a ''child'' for purposes of child's insurance benefits under section 202(d)(1) of the Social Security Act (Act) solely because he or she is the biological child of the insured. Whether such child can be deemed dependent on the deceased insured individual under section 202(d)(3) of the Act [1] because he is considered legitimate under State law.

Statute/Regulation/Ruling Citation: Sections 202(d)(3), 216(e) and (h) of the Social Security Act (42 U.S.C. 402(d)(3), 416(e) and (h)); 20 CFR 404.355.

Circuit: Ninth (Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington).

Gillett-Netting v. *Barnhart*, 371 F.3d 593 (9th Cir. 2004), reh'g denied (9th Cir. Dec. 14, 2004).

Applicability of Ruling: This ruling applies to determinations or decisions at all administrative levels, i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing, and Appeals Council.

Description of Case: On August 19, 1996, Rhonda Gillett-Netting filed applications for child's insurance benefits on behalf of her twin children as survivors of the insured, Robert Netting. The twins, born 18 months after the insured's death, were conceived through in-vitro fertilization using sperm that the insured had frozen and stored before he died. The Social Security Administration (Agency) denied the claims, finding that neither twin met the statutory definition of ''child'' and that neither twin was dependent on the father at the time of his death as required by the Act. The district court upheld the Agency's decision. After the district court denied the plaintiff's motion for reconsideration, Gillett-Netting filed an appeal with the Court of Appeals for the Ninth Circuit.

Holding: On appeal, the Ninth Circuit reversed the decision of the district court and held that the twins were entitled to benefits because, as the insured's biological children, they met

[1] Section 202(d)(3) provides, in pertinent part, that ''A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) of this subsection. * * * [A] child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) * * * shall be deemed to be the legitimate child of such individual,'' and therefore presumptively dependent.

the ''child'' definition of the statute. Finding that there was no dispute about the twins' parentage, the court held that section 216(h)(2), (3) of the Act had ''no relevance to the issue before [it]'' and thus there was no need to consult State inheritance law. The court concluded that the twins were deemed dependent upon the insured under section 202(d)(3) of the Act because under Arizona law, they were his ''legitimate'' children. Under Arizona law, ''[e]very child is the legitimate child of its natural parents and is entitled to support and education as if born in lawful wedlock.'' [2] The court reasoned that because the insured was married to the mother of the twins and was the twins' biological father, the twins are legitimate under State law.

Statement as to How Gillett-Netting Differs From SSA's Interpretation of the Social Security Act

We determine that an individual may be eligible for child's insurance benefits under section 202(d)(1) of the Act if he is the ''child'' of an insured individual as defined in section 216(e) and was dependent on the insured at the time of his death under section 202(d)(3). Section 216(e)(1) defines a ''child'' as ''the child or legally adopted child of an individual.'' Section 216(h) provides the analytical framework that we must follow for determining whether a child is the insured's child for the purposes of section 216(e). Section 216(h)(2)(A) directs us to ''apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled * * * at the time of his death * * *'' (See also 20 CFR 404.355(a)(1)). A child who cannot inherit personal property from the deceased insured individual under State intestacy law may nonetheless be eligible for child's insurance benefits under limited circumstances under sections 216(h)(2)(B) and (3)(C); these circumstances do not apply to an after-conceived child. (See also 20 CFR 404.355(a)).[3] Consequently, to meet the definition of ''child'' under the Act, an after-conceived child must be able to inherit under State law.

If the individual satisfies the definition of ''child'' under section 216(e), the child must also show he or she ''was dependent upon'' the insured individual ''at the time of [the insured's] death'' in order to be eligible for benefits under section 202(d)(1)(C)(ii). Under section 202(d)(3), a ''legitimate'' child is ''deemed dependent'' upon the insured individual at the time of his death unless the child has been adopted by someone else. A child who satisfies the requirements of section 216(h)(2), (3) is deemed legitimate for purposes of section 202(d)(3) and, therefore, deemed dependent. Section 202(d)(3); Social Security Ruling 77–2c. Other children, though, must establish that they were living with their father at the time of his death or that he was contributing to their support in order to be found dependent under section 202(d)(3).

The Ninth Circuit in Gillett-Netting held that the twins established ''child'' status under the Act solely because they are the biological children of the insured. The court found that section 216(h) did not apply unless a child's parentage is disputed. The court also found that, under Arizona law, an insured individual's biological child conceived by artificial means after the death of the insured would be considered ''natural'' if the parents were married at the time of the insured's death. Further, the court concluded that every child in Arizona is the legitimate child of his natural parents. As a result, the Ninth Circuit deemed the twins dependent on the insured under section 202(d)(3) because it considered them to be legitimate under Arizona law. The court concluded that the twins were eligible for child's benefits under section 202(d) of the Act.

Explanation of How SSA Will Apply the Gillett-Netting Decision Within the Circuit

This ruling applies only to cases involving an applicant for surviving child's benefits who applies on the earnings record of a person who, at the time of death, had his permanent home in Alaska, Arizona, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, and Washington. While the court based its dependency determination on State law, it ruled that State law was irrelevant for determining ''child'' status if parentage was not in dispute.

In a claim for survivor's benefits, we will determine that a biological child of an insured individual who was conceived by artificial means after the insured's death is the insured's ''child'' for purposes of the Act. We will not apply section 216(h) of the Act in determining the child's status. In addition, if such child is considered legitimate under State law, we will consider the child to be the insured's ''legitimate'' child and thus deemed dependent upon the insured for purposes of section 202(d)(3) of the Act. All of the States and jurisdictions within the Ninth Circuit, except Guam, have eliminated distinctions between legitimate and illegitimate children. These States allow all children the same rights which flow between parents and their children, regardless of the parents' marital status. A child acquires these rights if he establishes that an individual is his parent under State family law provisions. Accordingly, if all other requirements are met, adjudicators will consider such child entitled to child's benefits under section 202(d).

[FR Doc. 05–18920 Filed 9–21–05; 8:45 am]

BILLING CODE 4191–02–P

[2] Ariz. Rev. Stat. § 8–601 (1975).

[3] An applicant will be deemed a ''child'' under section 216(e)(1) if he or she is the biological child of the insured and his or her parents went through a marriage ceremony that would have been valid but for a legal impediment. See section 216(h)(2)(B) of the Act; 20 CFR 404.355(a)(2). An applicant will also be considered a ''child'' if: (1) the insured had, before his death, acknowledged parentage in writing, been decreed a parent by a court, or been ordered to pay child support; or (2) there is satisfactory evidence that the deceased insured is the biological parent of the applicant and the insured was, at the time of his death, living with the applicant or contributing to his support. See section 216(h)(3)(C) of the Act; 20 CFR 404.355(a)(3)–(4). These additional tests for eligibility require action by the insured during the lifetime of the child.

DEPARTMENT OF STATE

[Public Notice 5192]

Determination on Provision of Assistance to the United Nations Democracy Fund

Pursuant to section 451 of the Foreign Assistance Act of l961, as amended (the ''Act'') (22 U.S.C. 2261) and section 1–100 of Executive Order 12163, as amended, I hereby authorize, notwithstanding any other provision of law, the use of up to $2,561,508 in fiscal year 2004 funds made available under chapter 3 of part I of the Act, up to $6,938,492 in FY 2004 and FY 2005 funds made available under chapter 4 of part II of the Act, and up to $500,000 in FY 2005 funds made available under chapter 9 of part II of the Act, in order to provide assistance authorized by part I of the Act for a contribution to the United Nations Democracy Fund. This Determination supersedes and replaces the Determination of July 27, 2005, on Provision of Assistance to United Nations Democracy Fund.

This Determination shall be reported to the Congress promptly, and shall be published in the **Federal Register**.

Dated: September 10, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–18967 Filed 9–21–05; 8:45 am]

BILLING CODE 4710–37–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance, Bolton Field Airport; Columbus, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the release of 13.6672 acres of airport property for an exchange of property between the Columbus Regional Airport Authority (CRAA) and the City of Columbus. The land currently houses a solid waste transfer station that will remain on the site. The land was conveyed to the City of Columbus in Deed Volume 2803, page 547 of the Recorder's Office, Franklin County, Ohio. The land was acquired by the City of Columbus with funding from Federal Grant 8–39–0026–01. There are no impacts to the airport by allowing the airport to dispose of the property. Approval does not constitute a commitment by the FAA to financially assist in the disposal of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. In exchange, the CRAA will receive a parcel of land (43.562 acres) currently being used as a golf course facility adjacent to Port Columbus International Airport. This parcel is partially located in the existing Runway Protection Zone for Runway 10R–28L as indicated on the approved Airport Layout Plan (ALP) for Port Columbus International Airport.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before October 24, 2005.

FOR FURTHER INFORMATION CONTACT: Mary W. Jagiello, Program Manager, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–608, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone Number (734–229–2956)/Fax Number (734–229–2950). Documents reflecting this FAA action may be reviewed at this same location or at Bolton Field Airport, Columbus, Ohio.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Columbus, Franklin County, Ohio, and described as follows:

Beginning at a ¾″ iron pipe and cap set at the northwesterly corner of the said 110.86 acre tract and being in the centerline of Georgesville road; Thence north 76°35′37″ East along the centerline of said Georgesville Road a distance of 102.74 feet to a ¾″ iron pipe and cap set.

Thence South 1°6′50″ West passing a ¾″ iron pin at 101.25 feet on the southerly right of way line of said Georgesville Road and the northwest corner of a 16.715 acre tract conveyed to Robert Eicholt, Rita J. Sabatino, John R. Hetrick as recorded in OR13962G03, Recorder's Office Franklin County, Ohio and continuing along the westerly line of the said 16.715 acre tract and easterly line of said 110.86 acre tract, a total distance of 596.98 feet to a ¾″ iron pipe and cap set;

Thence South 88°49′46″ East along the southerly line of the said 16.715 acre tract and a northerly line of said 110.86 acre tract a distance of 676.04 feet to a ¾″ iron pipe and cap set;

Thence South 1°10′14″ West a distance of 692.21 feet to a ¾″ iron pipe and cap set;

Thence North 88°49′46″ West a distance of 775.35 feet to a ¾″ iron pipe and cap set in the westerly line of said 110.86 acre tract and easterly line of the Southwest Airport Industrial Park, Section 2 and recorded in Plat Book 45, page 73 of the Recorder's Office, Franklin County, Ohio;

Thence North 01°06′50″ East along the westerly line of the said 110.86 acre tract and the easterly line of the said Southwest Airport Industrial Park, Section 2, passing a ¾″ iron pipe at a distance of 1160.84 feet and being the northeast corner of Lot 1 of said Southwest Airport Industrial Park, Section 2 and the southerly right-of-way line of said Georgesville Road, a total distance of 1263.19 feet to the place of beginning, containing 13.6672 acres of land and being subject to all legal highways, easements and restrictions of record.

Bearings are based on State Plane Coordinates NAD 83. All ¾″ iron pipes and caps set has the logo S5669.

Dated: Issued in Romulus, Michigan on August 5, 2005.

Winsome A. Lenfert,

Acting Manager, Detroit Airports District Office FFA, Great Lakes Region.

[FR Doc. 05–18933 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Portland International Jetport, Portland, ME

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map for Portland International Jetport, as submitted by the City of Portland, Maine under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150, is in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Portland International Jetport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before March 8, 2006.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure map and of the start of its review of the associated noise compatibility program is September 9, 2005. The public comment period ends on November 11, 2005.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, ANE–600, 12 New England Executive Park, Burlington, Massachusetts 01803.

Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure map submitted for Portland International Jetport is in compliance with applicable requirements of part 150, effective September 9, 2005. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before March 8, 2006. This notice also announces the availability of this

program for public review and comment.

Under section 103 of 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 a noise exposure map which meets applicable regulations and which depicts non compatible land uses as of the date of submission of such map, a description of projected aircraft operations, and the ways in which such operations will affect such map. The Act requires such map to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted a noise exposure map that is found by FAA to be in compliance with the requirements of Federal Aviation Regulation (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 introduction of additional non-compatible uses.

The city of Portland, Maine submitted to the FAA, on August 31, 2005, a noise exposure map, descriptions, and other documentation that were produced during the Airport Noise Compatibility Planning (part 150) study at Portland International Jetport from December 2001 to August 2005. It was requested that the FAA review this material as the noise exposure map, 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 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by City of Portland, Maine. The specific maps under consideration were: (1) ''Figure 24. Noise Exposure Map DNL Contours for Year 2002 Operations with and without Terrain Adjustments''; (2) ''Figure 26. Noise Exposure Map DNL Contours for 2007 Forecast Operations Compared to Contours for 2002 Existing Operations''; and (3) ''Figure 38. Noise Compatibility Program DNL Contours for 2007 NEM''; along with the supporting documentation in Noise Exposure Map and Noise Compatibility Program Updates, August 2005. The FAA has determined that the maps for Portland International Jetport are in compliance with applicable requirements. This determination is effective on September 9, 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 the 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 map 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 a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depiciting properties on the surface rests exclusively with the airport operator that submitted the map, 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, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Portland International Jetport, also effective on September 9, 2005. Preliminary review of the submitted material indicates 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 8, 2006. The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations 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 uses 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 map, the FAA's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Portland International Jetport, 1001 Westbrook Street, Portland, Maine 04102.

Federal Aviation Administration, New England Region, Airports Division, ANE–600, 16 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Dated: Issued in Burlington, Massachusetts on September 9, 2005.

LaVerne F. Reid,

Manager, Airports Division.

[FR Doc. 05–18930 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aging Transport Systems Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aging Transport Systems Rulemaking Advisory Committee (ATSRAC).

DATES: The ATSRAC will meet October 12, 2005 from 7 a.m. to 2 p.m. PDT.

ADDRESSES: The FAA will conduct the meeting by teleconference and by Webex. The instructions for both are indicated below under the heading ''Meeting Instructions.''

FOR FURTHER INFORMATION CONTACT: Shirley Stroman, Office of Rulemaking, ARM–208, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470; fax (202) 267–5075; or e-mail *shirley.stroman@faa.gov*.

SUPPLEMENTARY INFORMATION: This notice announces a meeting of the Aging Transport Systems Rulemaking Advisory Committee. The meeting topics are listed under the ''Meeting Agenda'' heading of this notice. The meeting is open to the public; however, participation will be limited to the number of persons the meeting arrangements can accommodate.

The public may present written statements to the Committee by providing 20 copies to the Committee's Executive Director. Public statements at the meeting will be considered if time allows. You may contact the individual under the **FOR FURTHER INFORMATION CONTACT** heading of this notice for additional instructions if you want to file a written statement.

Meeting Agenda

The agenda topics will include—

- Harmonization Working Group 12's report;
- FAA response to ATSRAC open recommendations;
- Status of Enhanced Airworthiness Program for Airplane Systems proposed rulemaking and related Advisory Circulars; and
- Regulatory harmonization.

Meeting Instructions

Teleconference: The teleconference number for callers within the United States is 1.866.442.8714. For international callers the number is 281.540.4931. Once you are connected, you should follow the instructions at the prompts. The passcode to connect to the teleconference is 9177755#.

Webex: You may view and exchange information using a Webex connection. It is important for you to set-up your Webex access at least one hour before the meeting to avoid delays. To join the meeting using Webex, sign onto the Internet and enter the Web address given below. *https://boeing.webex.com.*

After signing on, click the ''Assistance—Support'' menu and enter meeting number 897 181 779. After completing the information requests, enter the following password: agingairplane.

If you have questions about the meeting instructions, you may contact the individual listed under the **FOR FURTHER INFORMATION CONTACT** heading of this notice.

Please keep in mind that you will be responsible for any long distance charges you may incur to connect to the meeting from outside the calling area.

Issued in Washington, DC, on September 16, 2005.

Tony Fazio,

Director, Office of Rulemaking.

[FR Doc. 05–18938 Filed 9–21–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34694 (Sub–No. 1)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

AGENCY: Surface Transportation Board.

ACTION: Partial revocation of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the trackage rights described in STB Finance Docket No. 34694 [1] to permit the trackage rights to expire on or about December 31, 2005, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

DATES: This exemption is effective on October 22, 2005. Petitions to stay must be filed by October 3, 2005. Petitions to reopen must be filed by October 12, 2005.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34694 (Sub-No. 1) 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 T. Christopher Lewis, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Eric Davis (202) 565–1608. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 15, 2005.

By the Board, Chairman Nober, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18841 Filed 9–21–05; 8:45 am]

BILLING CODE 4915–01–P

[1] On April 26, 2005, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice, served and published in the **Federal Register** on May 16, 2005 (70 FR 25883), covered the agreement by BNSF Railway Company (BNSF) to grant temporary local trackage rights to UP over a BNSF line of railroad between BNSF milepost 11.3 in UP Junction, WA, and BNSF milepost 36.0 near Sprague, WA, a distance of approximately 24.7 miles. Because the temporary trackage rights are ''local'' rather than ''overhead'' rights, they did not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). The trackage rights operations under the exemption were scheduled to begin on May 3, 2005.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 661X)]

CSX Transportation, Inc.—Abandonment Exemption—in Raleigh County, WV

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 15.12-mile line of railroad on its Southern Region, Huntington Division East, Jarrolds Valley Subdivision, between Jarrolds Valley Junction, milepost CLP 0.0, and Clear Creek, milepost CLP 15.12, at the end of the track in Raleigh County, WV. The line traverses United States Postal Service Zip Codes 25008, 25044, 25048, 25060 and 25193.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this

exemption will be effective on October 22, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 30, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by October 12, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Esq., Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 27, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by September 22, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,200. *See* 49 CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–18941 Filed 9–21–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation—The Buckeye Union Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: The Buckeye Union Insurance Company has redomesticated from the State of Ohio to the State of Illinois effective January 1, 2005. The Company was last listed as an acceptable surety on Federal bonds at 70 FR 38510, July 1, 2005.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 revision, on page 38510 to reflect this change.

The Circular may be reviewed and downloaded through the Internet *(http://www.fms.treas.gov/c570/index.html)* or through our computerized public bulletin board system (FMS Inside Line) at (202) 874–6887. A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 9, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05–18969 Filed 9–21–05; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–103735–00] and [REG–155303–03]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning these existing final regulations, REG–103735–00 and REG–155303–03, Tax Shelter Disclosure Statements.

DATES: Written comments should be received on or before November 21, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Tax Shelter Disclosure Statements.

OMB Number: 1545–1685.

Regulation Project Number: REG–103735–00 and REG–155303.

Abstract: These regulations provide guidance on the filing requirement under section 6011 for certain corporate taxpayers engaged in transactions producing tax savings in excess of certain dollar thresholds.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of currently approved collection.

Affected Public: Individual or households, Business or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 05–18878 Filed 9–21–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–116641–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulation, REG–116641–01 Information Reporting and Backup Withholding for Payment Card Transactions.

DATES: Written comments should be received on or before November 21, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Information Reporting and Backup Withholding for Payment Card Transactions.

OMB Number: 1545–1819.

Regulation Project Number: REG–116641–01.

Abstract: This document contains final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. This document also contains final regulations relating to the IRS TIN Matching Program.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Total Annual Reporting Burden: 2000.

Estimated Average Annual Burden per Respondent: 5,875 hours.

Estimated Number of Respondents: 11,750,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 14, 2005.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 05–18879 Filed 9–21–05; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R08–OAR–2005–UT–0002; FRL–7939–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Salt Lake City Revised Carbon Monoxide Maintenance Plan and Approval of Related Revisions

Correction

In rule document 05–15150 beginning on page 44055 in the issue of Monday, August 1, 2005, make the following corrections:

1. On page 44058, in the first column, in the table, under the heading ''Source category'' the fourth entry should read ''On-Road ''.

2. On page 44061, in table ''V-2'' in the second column, the heading ''On-road source emissions'' should read ''On-road mobile source emissions''.

[FR Doc. C5–15150 Filed 9–21–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
September 22, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT76

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service or we) prescribes final late-season frameworks from which States may select season dates, limits, and other options for the 2005–06 migratory bird hunting seasons. These late seasons include most waterfowl seasons, the earliest of which commences on September 24, 2005. The effect of this final rule is to facilitate the States' selection of hunting seasons and to further the annual establishment of the late-season migratory bird hunting regulations.

DATES: This rule takes effect on September 22, 2005.

ADDRESSES: States should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at our office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2005

On April 6, 2005, we published in the **Federal Register** (70 FR 17574) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2005–06 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 24, 2005, we published in the **Federal Register** (70 FR 36794) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2005–06 duck hunting season. The June 24 supplement also provided detailed information on the 2005–06 regulatory schedule.

On June 22 and 23, we held open meetings with the Flyway Council Consultants, at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2005–06 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

On August 1, 2005, we published in the **Federal Register** (70 FR 44200) a document dealing with the proposed frameworks for early-season regulations. In the August 30, 2004, **Federal Register** (70 FR 51522), we published final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected 2005–06 early-season hunting dates, hours, areas, and limits. On August 31, 2005, we published a final rule in the **Federal Register** (70 FR 51946) amending subpart K of title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons.

On July 27–28, 2005, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2005–06 regulations for these species. On August 22, 2005, we published in the **Federal Register** (70 FR 49068) the proposed frameworks for the 2005–06 late-season migratory bird hunting regulations. This document establishes final frameworks for late-season migratory bird hunting regulations for the 2005–06 season. We will publish State selections in the **Federal Register** as amendments to §§ 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

Population Status and Harvest

A brief summary of information on the status and harvest of waterfowl excerpted from various reports was included in the August 22 supplemental proposed rule. For more detailed information on methodologies and results, complete copies of the various reports are available at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the April 6, 2005, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 24, 2005, **Federal Register**, discussed the regulatory alternatives for the 2005–06 duck hunting season. Late-season comments are summarized below and numbered in the order used in the April 6 **Federal Register**. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Council Recommendations: The Atlantic Flyway Council recommended increasing the waterfowl possession limit to four times the daily bag limit, except where currently more liberal.

Service Response: We do not support the recommendation to increase possession limits. The possession limit regulation [50 CFR 20.33] is sometimes the only tool law enforcement personnel have to combat over-bag violations, due to the remoteness of some hunting locations and the difficulties officers/agents encounter while conducting surveillance of hunter compliance. Further, we believe the deterrence to violate would be substantially reduced by increasing the traditional possession limits.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the ''liberal'' regulatory alternative, with the exception of some specific bag limits described below in section 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections ii. September Teal/Wood Duck Seasons, iii. Black Ducks, iv. Canvasbacks, v. Pintails, and vii. Scaup.

Service Response: We are continuing development of an Adaptive Harvest Management (AHM) protocol that would allow hunting regulations to vary among Flyways in a manner that recognizes each Flyway's unique breeding-ground derivation of mallards. For the 2005 season, we believe that the prescribed regulatory choice for the Mississippi, Central, and Pacific Flyways should continue to depend on the status of midcontinent mallards and that the regulatory choice for the Atlantic Flyway should continue to depend on the status of eastern mallards. Investigations of the dynamics of western mallards (and their potential effect on regulations in the West) are continuing; therefore we are not yet prepared to recommend an AHM protocol for this mallard stock.

For the 2005 hunting season, we are continuing to consider the same regulatory alternatives as those used last year. The nature of the restrictive, moderate, and liberal alternatives has remained essentially unchanged since 1997, except that extended framework dates have been offered in the moderate and liberal regulatory alternatives since 2002. Also, we agreed in 2003 to place a constraint on closed seasons in the western three Flyways whenever the midcontinent mallard breeding-population size (traditional survey area plus MN, MI, and WI) is ≥5.5 million.

Optimal AHM strategies for the 2005 hunting season were calculated using: (1) Harvest-management objectives specific to each mallard stock; (2) the 2005 regulatory alternatives; and (3) current population models and associated weights for midcontinent and eastern mallards. Based on this year's survey results of 7.54 million midcontinent mallards (traditional surveys area plus MN, WI, and MI), 3.9 million ponds in Prairie Canada, and 1.05 million eastern mallards, the prescribed regulatory choice for all four Flyways is the liberal alternative. Therefore, we concur with the recommendations of the Atlantic, Mississippi, Central, and Pacific Flyways regarding selection of the ''liberal'' regulatory alternative and adopt the ''liberal'' regulatory alternative, as described in the June 24 **Federal Register**.

C. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow three zones, with two-way splits in each zone, as an additional option for duck season configurations in 2006–2010. Guidelines for zone-split configurations should be finalized by September 2005 so States have adequate opportunity to consider possible changes for 2006.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service allow three zones, with two-way splits in each zone, and four zones with no splits, as additional options for duck season configurations in 2006–2010. In addition, the Committee recommended that States with existing grandfathered status be allowed to retain that status.

The Central Flyway Council recommended allowing three zones, with three-segment splits in each zone, and four zones with no splits, as additional options for in 2006–2010.

Written Comments: The Wisconsin Department of Natural Resources, the Wisconsin Natural Resources Board, the Missouri Department of Conservation, and the Illinois Department of Natural Resources expressed support for the Upper-Region Regulations Committee of the Mississippi Flyway Council's recommendation that the Service allow three zones, with two-way splits in each zone, and four zones with no splits, as additional options for duck season configurations in 2006–2010. In addition, Missouri questioned allowing some States the ability to ''grandfather'' zone and split season arrangements and requested that we establish criteria that are consistently applied to all States.

The Colorado Wildlife Commission recommended allowing three zones, with three-segment splits in each zone as an additional option for duck season configurations in 2006–2010. The Colorado Division of Wildlife recommended allowing three zones, with two-segment splits in each zone as an additional option for duck season configurations in 2006–2010.

Congressman Ron Kind, the Wisconsin Wildlife Federation, the LaCrosse County Conservation Alliance, and the Wisconsin Waterfowl Association supported the Wisconsin Department of Natural Resources' request that the Service allow three zones, with two-way splits in each zone, and four zones with no splits, as additional options for duck season configurations in 2006–2010.

An individual from Ohio proposed the addition of a third zone in Ohio, while an individual from Wisconsin requested that we allow three zones, with two-way splits in each zone.

Service Response: In 1990, because of concerns about the proliferation of zones and split seasons for duck hunting, a cooperative review and evaluation of the historical use of zone/split options was conducted. This review did not show that the proliferation of these options had increased harvest pressure; however, the ability to detect the impact of zone/split configurations was poor because of unreliable response variables, the lack of statistical tests to differentiate between real and perceived changes, and the absence of adequate experimental controls. Consequently, guidelines were established to provide a framework for controlling the proliferation of changes in zone/split options. The guidelines identified a limited number of zone/split configurations that could be used for duck hunting and restricted the frequency of changes in these configurations to 5-year intervals. In 1996, the guidelines were revised to provide States greater flexibility in using their zone/split arrangements. Open seasons for changes occurred in 1991, 1996, and 2001. The fourth open season will occur next year when zone/split configurations will be established for the 2006–2010 period.

In response to recommendations from the Flyway Councils, we considered changes to the current zone/split guidelines. We believe that the current guidelines continue to achieve their intended objectives while allowing States sufficient flexibility to address differences in physiography, climate, and other factors and that the guidelines need not be changed. Thus, the following guidelines will be used to guide zone/split selection for next year's and future open seasons:

Guidelines for Duck Zones and Split Seasons

The following zone/split-season guidelines apply only for the regular duck season:

a. A zone is a geographic area or portion of a State, with a contiguous boundary, for which independent dates may be selected for the regular duck season.

b. Consideration of changes for management-unit boundaries is not subject to the guidelines and provisions

governing the use of zones and split seasons for ducks.

c. Only minor (less than a county in size) boundary changes will be allowed for any grandfather arrangement, and changes are limited to the open season.

d. Once a zone/split option is selected during an open season, it must remain in place for the following 5 years.

Any State may continue the configuration used in the previous 5-year period. If changes are made, the zone/split-season configuration must conform to one of the following options:

1. Three zones with no splits,

2. Split seasons (no more than 3 segments) with no zones, or

3. Two zones with the option for 2-way (2-segment) split seasons in one or both zones.

Grandfathered Zone/Split Arrangements

When the zone/split guidelines were first implemented in 1991, several States had completed experiments with zone/split arrangements different from Options 1–3 above. Those States were offered a one-time opportunity to continue those arrangements, with the stipulation that only minor changes could be made to zone boundaries; and if they ever wished to change their zone/split arrangement, the new arrangement would have to conform to one of the 3 options identified above. If a grandfathered State changes its zoning arrangement, it cannot go back to the grandfathered arrangement it previously had in place. We request that by April 15, 2006, States notify us whether or not they plan to change their zone/split configurations for the next 5-year period (2006–2010). Those States wishing to change their configuration should submit a proposal for the change by this date.

D. Special Seasons/Species Management

ii. September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended increasing the wood duck bag limit in the Atlantic Flyway to three birds during October 1 to the first Sunday in November for a 3-year experimental period (2005/06–2007/08).

Written Comments: The New York Division of Fish, Wildlife and Marine Resources (NYDFW) expressed concern that we did not support the Atlantic Flyway's proposal to increase the wood duck bag limit. They cited Breeding Bird Survey data showing a significant increase in wood duck numbers over the past 20 years and one of the most abundant breeding duck species in the Flyway. Further, they believed this change in bag limits would not jeopardize any wood duck populations and would allow for an informed assessment during a 3-year experimental period.

Service Response: We do not support the Atlantic Flyway Council's proposal to increase the bag limit for wood ducks. We note that breeding bird survey estimates for the past 10 years exhibit no significant trend, suggesting the population may be stable and using population data over the past 20 years does not accurately reflect recent trends during which season lengths have increased significantly. In addition, preliminary harvest-rate estimates from the cooperative band-reporting-rate study suggest that current wood duck harvest rates are higher than previously thought. We believe that a full assessment of this information is needed to determine whether or not wood ducks can sustain additional harvest pressure. We will continue our cooperative assessments of available wood duck population data with both the Mississippi and Atlantic Flyways, and expect a full assessment to take several years.

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that we give conceptual approval to allow the States of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, New York, and New Jersey an option to return to a two-black-duck daily bag limit in any or all waterfowl management zones for possible implementation in 2006. The season length for black ducks would be reduced for the number of days appropriate to ensure no increase in black duck harvest or harvest rate. This approach would require the development of a 3-year experimental design covering a block of States large enough to support appropriate evaluation.

Written Comments: The Atlantic Flyway Council was disappointed that we rejected their recommendation to explore a two bird bag-limit option in exchange for a reduction in season length within a portion of the Flyway. They cited our lack of flexibility and resiliency to work collaboratively with the Flyway Councils on new or emerging constructs for sub-regional duck harvest management.

The NYDFW was also concerned that we did not support the Flyway's proposal. They cited population survey data in much of eastern Canada showing that black ducks have been stable or increasing over the past 15 years and that the Breeding Bird Survey (BBS) data for the Atlantic Flyway shows a significant positive trend for the past 10 years. They urged us to work collaboratively with the States to make responsible changes in black duck regulations in 2006 and to be receptive to the possibility of differential regulations within the flyway as a more effective way to achieve flyway management objectives.

Service Response: During this past year, we have continued dialogue with the Atlantic and Mississippi Flyway Councils regarding assessments of the harvest potential of black ducks. We are particularly concerned about evidence of a long-term decline in the productivity of black ducks, which implies declining harvest potential. Harvest rates of black ducks have increased concurrently with implementation of AHM and the return to longer seasons. Current harvest rates are now at or near maximum sustainable harvest levels. If the decline in productivity continues and harvest rates are not reduced, harvest and population size can be expected to decline as well. In light of these concerns resulting from the assessment work conducted to date, we do not support the Atlantic Flyway Council's proposal. Further, breeding surveys in eastern Canada are currently being expanded to reflect range-wide changes in breeding numbers and can be used to more reliably monitor population trends in the future. The Atlantic Flyway Breeding Plot Survey shows a significant decline in breeding pairs over the history of the survey (1993–2005) and do not support the BBS data which is less targeted toward waterfowl.

In addition to the biological concerns expressed above, we have a more basic conceptual concern with this proposal. In general, we do not support dividing Flyways into regions with differential species regulations and/or regulatory options. This policy is predicated on the fact that our monitoring and assessment capacity is primarily designed to monitor harvest and population status at the Flyway scale. In many cases, our monitoring programs do not have the necessary precision to evaluate the management of duck stocks at smaller spatial scales. Also, our recent assessments using the latest banding data shows considerable overlap in harvest derivations and high harvest rates of regional breeding stocks to the northern and southern portions of the Atlantic Flyway. Therefore, these data do not lend support for regional sub-divisions. Although additional effort can be directed at refining these estimates, we believe the costs of the additional information far outweighs any potential benefits to resource

conservation, harvest opportunity, or hunter satisfaction. We will continue to work collaboratively with Flyway Councils to develop the assessment tools needed to inform harvest management decisions.

iv. Canvasbacks

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a ''restrictive'' canvasback season consisting of a 1-bird daily bag limit and a 30-day season in the Atlantic and Mississippi Flyways, 39-day season in the Central Flyway, and 60-day season in the Pacific Flyway.

Service Response: Based on regulatory actions in recent years and recommendations from the Flyway Councils, the canvasback harvest strategy was modified in 2004 to allow partial seasons within the regular duck season. The modification allows a canvasback season length equal to that of the ''restrictive'' AHM regulatory alternative if a full season is not supported, but the reduced harvest from the restricted season predicts a spring abundance the following year equal to or greater than the objective of 500,000 birds. Otherwise, the season on canvasbacks would be closed. Further, Alaska would have a 1-bird daily bag limit for the entire regular duck season in all years unless we determine that it is in the best interest of the canvasback resource to close the season in Alaska as well as the lower 48 States.

This year's spring survey resulted in an estimate of 520,574 canvasbacks. The estimate of ponds in Prairie Canada was 3.9 million, which was 17% above the average. The allowable U.S. harvest calculated from these numbers is 84,424 birds, which is below the predicted U.S. harvest of 118,904 associated with the ''liberal'' duck season alternative. Thus, for 2005–06, a canvasback season the entire length of the regular season is not supported. However, the ''restrictive'' season length within the regular duck season is expected to result in a harvest of about 61,758 canvasbacks and a spring 2006 population of about 531,000, and is supported. Thus, we will establish a season length at the level of the ''restrictive'' AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Seasons may be split according to applicable zones/split duck hunting configurations approved for each State.

v. Pintails

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a full season for pintails consisting of a 1-bird daily bag limit and a 60-day season in the Atlantic and Mississippi Flyways, a 74-day season in the Central Flyway, and a 107-day season in the Pacific Flyway.

Service Response: We earlier endorsed the continued use of the pintail harvest strategy without alteration from the provision adopted in 2004. With an observed spring breeding population of 2,561,000 and a projected fall flight of 3,215,000 pintails, the harvest strategy prescribes a full season and a 1-bird daily bag limit in all Flyways. Under the ''liberal'' season length, this regulation is expected to result in a harvest of 603,000 pintails with 2,288,000 birds in next year's breeding population. Thus, we concur with the Atlantic, Mississippi, and Pacific Flyway Council recommendations for the selection of a full season for pintails.

Furthermore, we agree with the Central Flyway's recommendation to adopt a 39-day ''season within a season'' for pintails. We understand that this departure from the pintail strategy is a necessary step for the Flyway to complete a 3-year evaluation of the ''season within a season'' structure for pintails and canvasbacks. This baseline information will allow a comparison to a proposed strategy to implement an experimental ''Hunter's Choice'' season in the future.

vi. Scaup

Council Recommendations: The Atlantic Flyway recommended States be given the option of choosing a scaup season of 60 days with a one-bird daily bag limit, or a restrictive 30-day (consecutive) season with a three-bird daily bag limit.

Written Comments: Delta Waterfowl Foundation urged delay of the Service's proposed daily bag limit reduction in order to achieve a better science-based foundation for management decisions on scaup populations, an assessment of potential scaup management options on waterfowl hunter clients and the future of waterfowl hunting, and a more collaborative process for management decisions pertaining to scaup populations.

Service Response: In 1998, we first publicly stated our concern about the declining trend in the scaup population, and stated that substantial reductions in harvest opportunity might soon be necessary. We also stated our intent to work with the Flyway Councils to cooperatively develop regulatory guidelines for scaup.

In 1999, we reiterated our concerns, heightened by an increasing trend in harvest. We also completed an in-depth review of the status of lesser and greater scaup in North America and provided that report to the Flyway Councils for their review and consideration. Following that report, we drafted a preliminary strategy to help guide the development of hunting regulations for scaup and asked the Flyway Councils to provide feedback. No consensus was reached among the Flyway Councils on a strategy for regulating scaup harvest. In light of this continuing decline, we reduced the daily bag limit by three birds in all Flyways in an effort to reduce harvest until such time as a more comprehensive strategy can be developed.

During 2000–2003, we continued to state our concern about the decline of the continental scaup population and that little progress was being made toward an acceptable harvest strategy. The lack of progress was in part due to other priorities that dominated the agendas of both the Service and the Flyway Councils, but probably also in part due to the widespread belief that harvest had played little, if any, role in the population decline. In 2004, we issued an in-depth report concerning the population dynamics of scaup. The report suggested that scaup harvests had not declined with the bag-limit restrictions imposed in 1999, that the breeding population was continuing to decline, and that harvest rates had increased dramatically. We decided to take no regulatory action in 2004 in order to provide the Flyway Councils adequate time to review these findings.

A second assessment report provided to the Flyway Councils this summer strengthened our confidence in these conclusions. Although harvest has not been demonstrated to be a causal factor in the population decline, harvests now appear to be at or near maximum sustainable levels. Perhaps more importantly, there is increasing evidence that the long-term decline of the scaup population has been accompanied by declines in the sustainable levels of harvest. Based on assessments of available data to date, we believe that additional regulatory restrictions on scaup at this time are warranted. We also believe that the Flyway Councils and the public have had sufficient opportunity to review scientific findings and collaborate in all aspects of the regulatory process over

the last five years. Therefore, we will: (1) Reduce the daily bag limit for scaup by 1 bird in each Flyway; (2) continue assessment work with a goal of developing a framework for making more informed regulatory decisions for scaup harvest management; and finally; and (3) ascertain if this bag-limit restriction results in a meaningful reduction in harvest *rate* to a level that is more consistent with scaup population levels and harvest potential than is currently the case. Our most recent (February 2004 and July 2005) assessment reports on scaup are available at *http://migratorybirds.fws.gov/mgmt/ahm/special-topics.htm*. We continue to invite critical technical review of this assessment work.

Lastly, we appreciate the Atlantic Flyway Council's recommendation calling for further restrictions on scaup harvest. However, we do not support their request for an optional bag limit in exchange for a shorter season length due to our inability to assess the effects on harvest.

3. Mergansers

Council Recommendations: The Atlantic Flyway Council recommended that we offer Atlantic Flyway States the option of including the merganser bag limit within the regular duck bag limit (the merganser limit would be the same as the regular duck bag limit). States would also have the option of selecting a separate merganser bag limit. The Council further recommended that the daily bag limit on hooded mergansers be increased from one to two birds.

Service Response: We concur with the recommendation to allow mergansers to be included in the duck bag limit in the Atlantic Flyway. Regarding hooded mergansers, we understand that a variety of data sources suggest that hooded mergansers may be increasing. However, the recommendation from the Council to increase the bag limit has implications beyond the Atlantic Flyway. Therefore, we will defer a decision until next year to allow the other Flyway Councils to consider the ramifications of this recommendation in their respective Flyways.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Atlantic Population (AP) Canada goose hunting regulations include a 45-day season, with a daily bag limit of three geese in the New England and Mid-Atlantic Regions with an opening framework date of the fourth Saturday in October and a closing date of January 31. In the Chesapeake Region (except Back Bay, VA), season length would be 45 days, with a daily bag limit of two geese. In Back Bay, VA, season length would be 15 days at the end of the Virginia's AP season, with a daily bag limit of one goose. The framework opening date in the Chesapeake Region would be November 15 and the closing date would be January 31. Remaining AP harvest areas (i.e., Northeast Hunt Unit in coastal NC) would remain closed. The Council also recommended modification of the Pymatuning Zone in Pennsylvania to include a portion of Crawford County. Further, the Council recommended that the framework for the SJBP Canada goose zone in Pennsylvania be 70 hunting days between the second Saturday in October and February 15 with a daily bag limit of no more than two for days used before January 15 and a daily bag limit of five for days used between January 15 and February 15. Lastly, the Council recommended modifications to Atlantic Flyway Resident Population (AFRP) regular-season hunting zones in New York, Pennsylvania, Maryland, and North Carolina.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended a number of changes in season length, season dates, bag limits, and quotas for Minnesota, Iowa, and Missouri in response to changes in the status of the Eastern Prairie Population (EPP) Canada goose population and in Kentucky, Tennessee, Wisconsin, Michigan, and Illinois in response to changes in the status of the Mississippi Valley Population (MVP) Canada goose population.

The Pacific Flyway Council recommended the following changes for geese in the Pacific Flyway: (1) Increase the daily bag limit for Aleutian and cackling geese in California's Northeast zone and Balance of State zone from one per day to four per day; (2) remove the Canada goose hunting closure in the Sacramento Valley of the Balance of State Zone in California; (3) decrease the cackling goose daily bag limit from four per day to two per day in the Oregon and Washington special permit goose zones; (4) remove the restriction on Aleutian geese in the Oregon special permit goose zone; and (5) remove the goose hunting closure in Coos and Curry counties Oregon.

Written Comments: The NYDFW stated that the framework opening date for Canada goose hunting in New York's RP Zone should be corrected to the fourth Saturday in October.

Service Response: We concur with all of the Atlantic Flyway Council's recommendations and New York's framework correction. However, regarding the recommendation to establish a limited season in Back Bay, Virginia, we are establishing the addition of a 15-day season, one bird per season, in North Carolina's Northeastern Hunt Unit. Both States will be required to conduct a 3-year evaluation to determine the origin of the harvested birds. We will work with Virginia and North Carolina to develop an MOU specifying criteria regarding sample sizes and methods of assessment. These assessments will be conducted at the individual State level.

We also concur with the Mississippi Flyway Council's recommendations.

Further, we concur with all of the recommendations forwarded by the Pacific Flyway Council with one exception, the request to increase small Canada goose bag limits from one to four in California. We are aware of the concerns regarding increasing depredation complaints stemming from increasing numbers of Aleutian Canada geese in California. We are also committed to achieving the population objectives for cackling geese and support the recommendations from the Pacific Flyway Council to achieve the targeted harvest reductions. The proposal to increase the small Canada goose bag limit in the Northeastern and Balance-of-State Zones in California does address the Aleutian depredation problem, but not the requested targeted harvest reductions for cackling geese. Therefore, since we believe only cackling geese occur in the Northeastern Zone, we do not support the proposed bag limit increase for this zone, as this change will not address the Aleutian goose depredation issue and will increase the harvest of cackling geese. However, in recognition of the depredation issue, and recognizing the very limited cackler harvest expected to result from the proposed bag limit increase in the Balance-of-State Zone, we support the increase in the bag limit from one to four small Canada geese in this zone.

5. White-Fronted Geese

Council Recommendations: The Atlantic Flyway Council recommended that the Service include white-fronted geese as part of Canada goose hunting regulation frameworks in the Atlantic Flyway to allow the legal take of this species.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 2005–06 white-fronted goose regulations be consistent with the ''base'' regulations in the

current White-fronted Goose Management Plan. This would result in regulations options of 72 days and two white-fronted geese per day or 86 days and one white-fronted goose per day. Their recommendation is contingent upon the same regulations being implemented in the eastern portion of the Central Flyway.

The Central Flyway Council recommended a season framework of 72 days with a daily bag limit of two white-fronted geese, or an alternative season of 86 days with a bag limit of one, in all East-tier States. In the West Tier States, the Council recommended a season framework of 107 days, except in Texas and Colorado where the season would be 95 days, with a daily bag limit of five white-fronted geese except in the Western Goose Zone of Texas where the daily bag limit will be one white-fronted goose. In both cases, States could split the season once.

Service Response: We concur with the recommendations of the Mississippi and Central Flyway Councils to return to the base regulations package for white-fronted geese this year as described in the original management plan. We also support the Atlantic Flyway Council's recommendation to include white-fronted geese as part of the Canada goose hunting regulation frameworks in the Atlantic Flyway.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 30-day season with a two-bird daily bag limit for Atlantic brant in 2005.

The Pacific Flyway Council recommends decreasing the brant season length in Washington from 16 days to 8 days and decreasing the brant season in California from 30 days to 15 days. Both States may create two zones. Seasons in Oregon and California must end by December 15.

Written Comments: An individual from Massachusetts recommended allowing a 50- or 51-day season with a one-bird daily bag limit.

Service Response: We concur with the Atlantic and Pacific Flyway Councils' recommendations.

7. Snow and Ross's (Light) Geese

Council Recommendations: The Pacific Flyway Council recommended increasing the light goose limit throughout the Flyway from three per day to four per day.

Service Response: We concur.

National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document, ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582), and our Record of Decision on August 18, 1988 (53 FR 31341). In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. Our notice beginning the public scoping process was published in the September 8, 2005, **Federal Register** (70 FR 53376).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was prepared in 1981. This analysis was subsequently revised annually from 1990–96, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, and 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2004 Analysis was based on the 2001 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $481 million and $1.2 billion at small businesses in 2004. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the surveys associated

with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, it allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this rule is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2005–06 hunting season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2005–06 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: September 14, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2005–06 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved the following frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2005, and March 10, 2006.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia,

Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms ''dark'' and ''light'' geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: 60 days, except for the season for canvasbacks, which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 2 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. These seasons also include white-fronted geese. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late-season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

South Zone: A special season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware

A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Florida

A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia

In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine

A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland

Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

Massachusetts

NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

New Hampshire

A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey

Statewide: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in

designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

RP Zone: A 70-day season may be held between the fourth Saturday in October (October 22) and February 15, with a 5-bird daily bag limit.

North Carolina

SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Northeast Hunt Unit: A 15-day experimental season may be held concurrent with the season selected for the Back Bay Area of Virginia. The seasonal bag limit is 1 bird.

Pennsylvania

SJBP Zone: A 70-day season may be held between the second Saturday in October (October 8) and February 15, with a 2-bird daily bag limit until January 14 and a 5-bird daily bag limit between January 15 and February 15.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island

A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina

In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont

A 45-day season may be held between the fourth Saturday in October (October 22) and January 31, with a 3-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: A 15-day experimental season may be held during the last 15 days of the AP Zone season with a 1-bird daily bag limit.

West Virginia

A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 30-day season between the Saturday nearest September 24 (September 24) and January 31, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits: 60 days, except that the season for canvasbacks may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 2 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 24) and March 10; for white-fronted geese not to exceed 72 days, with 2 geese daily or 86 days with 1 goose daily between the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 24) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 24) and January 31.

Alabama

In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas

In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois

The total harvest of Canada geese in the State will be limited to 80,600 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 86 days or when 16,000 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(a) Central Zone—The season for Canada geese will close after 86 days or when 20,600 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 86 days or when 8,200 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana

The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa

The season may extend for 70 days and may be split into 3 segments in each zone. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 10,300 birds. Of the 10,300-bird quota, 6,700 birds will be allocated to the Ballard Reporting Area and 2,600 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana

The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with a 72-day white-fronted goose season or 1 white-fronted goose with an 86-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan

(a) MVP—Upper and Lower Peninsula Zones—The total harvest of Canada geese will be limited to 50,000 birds for these zones combined. The framework opening date for all geese is September 16 and the season for Canada geese may extend for 28 days. The daily bag limit is 2 Canada geese.

(1) Allegan County Game Management Unit (GMU)—The Canada goose season will close after 25 days or when 1,500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 25 days or when 500 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16 and the season for Canada geese may extend for 28 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan GMU—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

(d) Central Michigan GMU—A 30-day special Canada goose season may be held between December 31 and February 7. The daily bag limit may not exceed 5 Canada geese.

Minnesota

(a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi

The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

(b) Remainder of the State—

(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 40 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 40 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 16. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31 and 2 Canada geese thereafter.

Ohio

The season for Canada geese may extend for 60 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 40 days and the daily bag limit is 2 Canada geese. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee

(a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 59 days, at least 9 of which must occur before Oct. 16. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin

The total harvest of Canada geese in the State will be limited to 62,500 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 21,000 birds. The season may not exceed 92 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 800 birds. The season may not exceed 65 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 40,700 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 92 days, except in the Mississippi River Subzone, where the season may not exceed 72 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 40,200 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson—Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Hunting Seasons and Duck Limits:

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except canvasbacks and pintails, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 10). A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except canvasbacks and pintails, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 2 scaup, and 2 wood ducks. A single canvasback and pintail may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 24) and the Sunday nearest February 15 (February 12). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 24) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999 are required.

Season Lengths and Limits:

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1

Canada goose may be selected. For white-fronted geese, these States may select either a season of 72 days with a bag limit of 2 or a 86-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 3 scaup, and 2 redheads. A single canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 24) and the last Sunday in January (January 29).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 1), and the last Sunday in January (January 29). Basic daily bag limits are 4 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 24), and the last Sunday in January (January 29). Basic daily bag limits are 4 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

Oregon may select a 16-day season, Washington an 8-day season, and California a 15-day season. Days must be consecutive. Washington and California may select hunting seasons by up to two zones. The daily bag limit is 2 brant and is in addition to dark goose limits. In Oregon and California, the brant season must end no later than December 15.

Arizona

The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 4 geese and may include no more than than 1 cackling Canada goose or 1 Aleutian Canada goose and 2 white-fronted geese.

Southern Zone: In the Imperial County Special Management Area, light geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 5).

Balance-of-the-State Zone: Limits may not include more than 4 geese per day, of which not more than 3 may be white-fronted geese. In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must begin no earlier than the last Saturday in October and end on or before December 14, and the daily bag limit shall contain no more than 2 white-fronted geese.

Oregon

Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling or Aleutian goose.

Harney, Klamath, Lake, and Malheur County Zone: For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 including not more than 2 cackling or Aleutian geese.

Closed Zone: All of Tillamook County.

Southwest Zone: The daily dark goose bag limit is 4 including cackling and Aleutian geese.

Washington

The daily bag limit is 4 geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky geese. See section on quota zones. In this area, the daily bag limit may include 2 cackling geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the daily bag limit may include 1 Aleutian goose.

Colorado

The daily bag limit for dark geese is 3 geese.

Idaho

The daily bag limit is 4 geese.

Nevada

The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico

The daily bag limit for dark geese is 3.

Utah

The daily bag limit for dark geese is 3.

Quota Zones

Seasons on dark geese must end upon attainment of individual quotas of

dusky geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 26). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 1). These seasons are also subject to the following conditions:

Montana

No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill measurement and color information.

Utah

No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 11) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada

No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 8) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2004, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 1) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to

NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue–Prospect Road, east along LaRue–Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, U.S. 10 east to U.S. 110, east along U.S. 110 to State 96, east along State 96 to State 76, south along State 76 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; and southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to

U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road ''R'' (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as Follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino—Riverside County line; south on a road known in Riverside

County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP L–Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H–Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

Resident Population (RP) Zone: Garrett, Allegany, Washington, Frederick, Howard, and Montgomery Counties; that portion of Baltimore County south of Route 138, Route 137, and Mount Carmel Road; that portion of Anne Arundel County west of Interstate 895, Interstate 97 and Route 3; that portion of Prince George's County west of Route 3 and Route 301, that portion of Charles County west of Route 301 to the Virginia State line; and that portion of Carroll County south of Route 88, west of Route 30 from the intersection of Route 30 and Route 88 to the intersection of Route 30 and Route 482, south of Route 482, south of Route 27 from the intersection of Route 27 and Route 482 to the intersection of Route 27 and Route 97, and west of Route 97 from the Intersection of Route 27 and Route 97 to the Pennsylvania line.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire

Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Goose Area—that area of New York State lying east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont boundary.

North Central Goose Area—that area of New York State lying north of a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, west along Route 146 to Albany County Route 252, northwest along Route 252 to Schenectady County Route 131, north along Route 131 to Route 7, west along Route 7 to Route 10 at Richmondville, south on Route 10 to Route 23 at Stamford, west along Route 23 to the south bank of the Susquehanna River, southwest along the south bank of the Susquehanna River to Interstate Route 88 near Harpursville, west along Route 88 to Route 79, northwest along Route 79 to Route 26 in Whitney Point, southwest along Route 26 to Interstate Route 81, north along Route 81 to the north shore of the Salmon River, west along the north shore of the Salmon River to the shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the international boundary with Canada, excluding the Lake Champlain Goose Hunting Area.

West Central Goose Area—that area of New York State lying within a continuous line beginning at the point where the northerly extension of Route 269 (County Line Road on the Niagara-Orleans County boundary) meets the International boundary with Canada, south to the shore of Lake Ontario at the eastern boundary of Golden Hill State Park, south along the extension of Route 269 and Route 269 to Route 104 at Jeddo, west along Route 104 to Niagara County Route 271, south along Route 271 to Route 31E at Middleport, south along Route 31E to Route 31, west along Route 31 to Griswold Street, south along Griswold Street to Ditch Road, south along Ditch Road to Foot Road, south along Foot Road to the north bank of Tonawanda Creek, west along the north bank of Tonawanda Creek to Route 93, south along Route 93 to the NYS Thruway, east along the Thruway 90 to Route 98 (at Thruway Exit 48) in Batavia, south along Route 98 to Route 20, east along Route 20 to Route 19 in Pavilion Center, south along Route 19 to Route 63, southeast along Route 63 to Route 246, south along Route 246 to Route 39 in Perry, south along Route 39 to Route 19A (south of Castile), south and southeast along Route 19A to Route 436, east along Route 436 to Route 36 in Dansville, south along Route 36 to Route 17, east along Route 17 to Belfast Street at Bath, east along Belfast Street to Route 415 (West Washington Street), southeast along Route 415 to Route 54, northeast along Route 54 to Steuben County Route 87, northeast along Route 87 to Steuben County Route 96, east along Route 96 to Steuben County Route 114, east along Route 114 to Schuyler County Route 23, east and southeast along Route 23 to Schuyler County Route 28, southeast along Route 28 to Route 409 at Watkins Glen, south along Route 409 to Route 14, south along Route 14 to Route 224 at Montour Falls, east along Route 224 to Route 228 in Odessa, north along Route 228 to Route 79 in Mecklenburg, east along Route 79 to Route 366 in Ithaca, northeast along Route 366 to Route 13, northeast along Route 13 to Interstate Route 81 in Cortland, north along Route 81 to the north shore of the Salmon River to shore of Lake Ontario, extending generally northwest in a straight line to the nearest point of the International boundary with Canada, south and west along the International boundary to the point of beginning.

Hudson Valley Goose Area—that area of New York State lying within a continuous line extending from Route 4 at the New York-Vermont boundary, west and south along Route 4 to Route 149 at Fort Ann, west on Route 149 to Route 9, south along Route 9 to Interstate Route 87 (at Exit 20 in Glens Falls), south along Route 87 to Route 29, west along Route 29 to Route 147 at Kimball Corners, south along Route 147 to Schenectady County Route 40 (West Glenville Road), west along Route 40 to Touareuna Road, south along Touareuna Road to Schenectady County Route 59, south along Route 59 to State Route 5, east along Route 5 to the Lock 9 bridge, southwest along the Lock 9 bridge to Route 5S, southeast along Route 5S to Schenectady County Route 58, southwest along Route 58 to the NYS Thruway, south along the Thruway to Route 7, southwest along Route 7 to Schenectady County Route 103, south along Route 103 to Route 406, east along Route 406 to Schenectady County Route 99 (Windy Hill Road), south along Route 99 to Dunnsville Road, south along Dunnsville Road to Route 397, southwest along Route 397 to Route 146 at Altamont, southeast along Route 146 to Main Street in Altamont, west along Main Street to Route 156, southeast along Route 156 to Albany County Route 307, southeast along Route 307 to Route 85A, southwest along Route 85A to Route 85, south along Route 85 to Route 443, southeast along Route 443 to Albany County Route 301 at Clarksville, southeast along Route 301 to Route 32, south along Route 32 to Route 23 at Cairo, west along Route 23 to Joseph Chadderdon Road, southeast along Joseph Chadderdon Road to Hearts

Content Road (Greene County Route 31), southeast along Route 31 to Route 32, south along Route 32 to Greene County Route 23A, east along Route 23A to Interstate Route 87 (the NYS Thruway), south along Route 87 to Route 28 (Exit 19) near Kingston, northwest on Route 28 to Route 209, southwest on Route 209 to the New York-Pennsylvania boundary, southeast along the New York-Pennsylvania boundary to the New York-New Jersey boundary, southeast along the New York-New Jersey boundary to Route 210 near Greenwood Lake, northeast along Route 210 to Orange County Route 5, northeast along Orange County Route 5 to Route 105 in the Village of Monroe, east and north along Route 105 to Route 32, northeast along Route 32 to Orange County Route 107 (Quaker Avenue), east along Route 107 to Route 9W, north along Route 9W to the south bank of Moodna Creek, southeast along the south bank of Moodna Creek to the New Windsor-Cornwall town boundary, northeast along the New Windsor-Cornwall town boundary to the Orange-Dutchess County boundary (middle of the Hudson River), north along the county boundary to Interstate Route 84, east along Route 84 to the New York-Connecticut boundary, north along the New York-Connecticut boundary to the New York-Massachusetts boundary, north along the New York-Massachusetts boundary to the New York-Vermont boundary, north to the point of beginning.

Western Long Island Goose Area—that area of Westchester County and its tidal waters lying southeast of Interstate Route 95, and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to International waters.

Eastern Long Island Goose Area—that area of Suffolk County that is not part of the Western Long Island Goose Hunting Area, as defined above.

South Goose Area—the remainder of New York State, excluding New York City.

Special Late Canada Goose Area—that area of Westchester County lying southeast of Interstate Route 95, and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell, Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer counties and the area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line).

SJBP Zone: Erie, Mercer and Crawford Counties except for the Pymatuning Zone.

Pymatuning Zone: The area south of SR 198 from the Ohio State line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line.

AP Zone: The area east of route SR 97 from Maryland State Line to the intersection of SR 194, east of SR 194 to intersection of U.S. Route 30, south of U.S. Route 30 to SR 441, east of SR 441 to SR 743, east of SR 743 to intersection of I–81, east of I–81 to intersection of I–80, south of I–80 to New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont

Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the ''Blue Ridge'' (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

Northwest Zone: Benton, Carroll, Baxter, Washington, Madison, Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois

Same zones as for ducks, but in addition:

North Zone:

Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone:

Central Illinois Quota Zone: The Counties of Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of Grundy, LaSalle and Will Counties south of Interstate Highway 80.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Indiana

Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper'Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

North Zone: That portion of the State north of U.S. Highway 20.

South Zone: The remainder of Iowa.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP-Upper Peninsula Zone: The MVP-Upper Peninsula Zone consists of the entire Upper Peninsula of Michigan.

MVP-Lower Peninsula Zone: The MVP-Lower Peninsula Zone consists of the area within the Lower Peninsula of Michigan that is north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then east to the southwest corner of Eaton county, then north to the southern border of Ionia county, then east to the southwest corner of Clinton county, then north along the western border of Clinton County continuing north along the county border of Gratiot and Montcalm counties to the southern border of Isabella county, then east to the southwest corner of Midland county, then north along the west Midland county border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 and easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake

Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri

Same zones as for ducks but in addition:

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin

Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly along Poplar Grove Road to Rockea Road, southerly along Rockea Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to

Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: That area contained within and bounded by the intersection of the South Dakota stateline and the Cherry County line, south along the Cherry County line to the Niobrara River, east to the Norden Road, south on the Norden Road to U.S. Hwy 20, east along U.S. Hwy 20 to NE Hwy 137, north along NE Hwy 137 to the Niobrara River, east along the Niobrara River to the Boyd County line, north along the Boyd County line to the South Dakota stateline. Where the Niobrara River forms the boundary, both banks of the river shall be included in the Niobrara Unit.

Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas-Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas-Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer-Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden-Grant-Sheridan Counties, west along the north border of Garden, Morrill, and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Bon Homme, Brule, Buffalo, Charles Mix, Gregory, Hughes, Lyman, Stanley, and Sully Counties; that portion of Dewey County south of U.S. 212, that portion of Hyde County south of U.S. Highway 14; that portion of Potter County west of U.S. Highway 83; Fall River County east of SD 71 and U.S. 385; and that portion of Custer County, east of SD 79 and south of French Creek.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

Northeast Goose Zone: That portion of Texas lying east and north of a line beginning at the Texas-Oklahoma border at U.S. 81, then continuing south to Bowie and then southeasterly along U.S. 81 and U.S. 287 to I–35W and I–35 to the juncture with I–10 in San Antonio, then east on I–10 to the Texas—Louisiana border.

Southeast Goose Zone: That portion of Texas lying east and south of a line beginning at the International Toll Bridge at Laredo, then continuing north following I–35 to the juncture with I–10 in San Antonio, then easterly along I–10 to the Texas-Louisiana border.

West Goose Zone: The remainder of the State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly

along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Albany, Campbell, Crook, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 3: Goshen and Platte Counties.

Area 4: Big Horn and Fremont Counties.

Pacific Flyway

Arizona

North Zone: Game Management Units 1–5, those portions of Game Management Units 6 and 8 within Coconino County, and Game Management units 7, 9, and 12A.

South Zone: Those portions of Game Management Units 6 and 8 in Yavapai County, and Game Management Units 10 and 12B–45.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as ''Aqueduct Road'' in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the ''Desert Center to Rice Road'' to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir

drainage; and Power County east of ID 37 and ID 39.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: All of Tillamook County.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Brant

Pacific Flyway

California

North Coast Zone: Del Norte, Humboldt and Mendocino Counties.

South Coast Zone: Balance of the State.

Washington

Puget Sound Zone: Skagit County.

Coastal Zone: Pacific County.

Swans

Central Flyway

South Dakota

Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. 05–18970 Filed 9–21–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
September 22, 2005

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 92

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2006 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

RIN 1018–AU39

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2006 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is proposing migratory bird subsistence harvest regulations in Alaska for the 2006 season. This proposed rule would establish regulations that prescribe frameworks, or outer limits, for dates when harvesting of birds may occur, species that can be taken, and methods and means that would be excluded from use. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. These regulations are intended to provide a framework to enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking proposes regulations that start on April 2, 2006, and expire on August 31, 2006, for the subsistence harvest of migratory birds in Alaska.

DATES: You must submit comments on the proposed subsistence harvest regulations for migratory birds in Alaska by November 21, 2005.

ADDRESSES: Send your comments on this proposed rule to the Regional Director, Alaska Region, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503, or fax to (907) 786–3306 or e-mail to *ambcc@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786–3887, or Donna Dewhurst, (907) 786–3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Background

What Events Led to This Action?

In 1916, the United States and Great Britain (on behalf of Canada) signed the Convention for the Protection of Migratory Birds in Canada and the United States (Canada Treaty). The treaty prohibited all commercial bird hunting and specified a closed season on the taking of migratory game birds between March 10 and September 1 of each year. In 1936, the United States and Mexico signed the Convention for the Protection of Migratory Birds and Game Mammals (Mexico Treaty). The Mexico treaty prohibited the taking of wild ducks between March 10 and September 1. Neither treaty allowed adequately for the traditional harvest of migratory birds by northern peoples during the spring and summer months. This harvest, which has occurred for centuries, was and is necessary to the subsistence way of life in the north and thus continued despite the closed season.

The Canada treaty and the Mexico treaty, as well as migratory bird treaties with Japan (1972) and Russia (1976), have been implemented in the United States through the Migratory Bird Treaty Act (MBTA). The courts have ruled that the MBTA prohibits the Federal Government from permitting any harvest of migratory birds that is inconsistent with the terms of any of the migratory bird treaties. The more restrictive terms of the Canada and Mexico treaties thus prevented the Federal Government from permitting the traditional subsistence harvest of migratory birds during spring and summer in Alaska. To remedy this situation, the United States negotiated Protocols amending both the Canada and Mexico treaties to allow for subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence harvest areas in Alaska. The U.S. Senate approved the amendments to both treaties in 1997.

What Has the Amended Treaty Accomplished?

The major goals of the amended treaty with Canada are to allow traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. The amended treaty with Canada provides a means to allow permanent residents of villages within subsistence harvest areas, regardless of race, to continue harvesting migratory birds between March 10 and September 1 as they have done for thousands of years. The Letter of Submittal of May 20, 1996, from the Department of State to the White House that officially accompanied the treaty protocol set the geographic baseline with lands north and west of the Alaska Range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands as the initial subsistence harvest areas.

What Has the Service Accomplished Since Ratification of the Amended Treaty?

In 1998, we began a public involvement process to determine how to structure management bodies to provide the most effective and efficient involvement for subsistence users. This process was concluded on March 28, 2000, when we published in the **Federal Register** (65 FR 16405) the Notice of Decision: ''Establishment of Management Bodies in Alaska to Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the establishment and organization of 12 regional management bodies plus the Alaska Migratory Bird Co-management Council (Co-management Council).

Establishment of a migratory bird subsistence harvest began on August 16, 2002, when we published in the **Federal Register** (67 FR 53511) a final rule at 50 CFR part 92 that set procedures for incorporating subsistence management into the continental migratory bird management program. These regulations established an annual procedure to develop harvest guidelines to implement a subsistence migratory bird harvest.

The next step established the first subsistence migratory bird harvest system. This was finalized on July 21, 2003, when we published in the **Federal Register** (68 FR 43010) a final rule at 50 CFR parts 20, 21 and 92 that created the first annual harvest regulations for the 2003 subsistence migratory bird season in Alaska. These annual frameworks were not intended to be a complete, all-inclusive set of regulations, but were intended to regulate continuation of customary and traditional subsistence uses of migratory birds in Alaska during the spring and summer. See the August 16, 2002, July 21, 2003, April 2, 2004, and April 8, 2005, final rules for additional background information on the subsistence harvest program for migratory birds in Alaska.

This current rulemaking is necessary because the migratory bird harvest season is closed unless opened and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Co-management Council held a meeting in May 2005, to develop recommendations for changes effective for the 2006 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 27 and 28, 2005, and were approved without modification.

This rule proposes regulations for the taking of migratory birds for subsistence uses in Alaska during 2006. This rule proposes to list migratory bird species that are open or closed to harvest, as well as season openings and closures by region, including several changes in the Yukon/Kuskokwim Delta region. It also proposes minor changes in the methods and means of taking migratory birds for subsistence purposes.

How Will the Service Continue To Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest?

The Service has an emergency closure provision (§ 92.21), so that if any significant increases in harvest are documented for one or more species in a region, an emergency closure can be requested and implemented. Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands and in areas north and west of the Alaska Range (§ 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on the five criteria set forth in § 92.5(c). These communities included: Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham and Nanwalek, Tyonek and Hoonah, populations totaling 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities included Craig, Hydaburg, and Yakutat, with a combined population of 2,459. These new regions increased the percentage of the State population included in the subsistence bird harvest only to 14 percent.

Subsistence harvest has been monitored for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, *e.g.*, Yukon/Kuskokwim Delta. This monitoring enables tracking of any major changes or trends in levels of harvest and user participation. In the March 3, 2003, **Federal Register** (68 FR 10024), we published a notice of intent to submit the Alaska Subsistence Household Survey Information Collection Forms to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, with a subsequent 60-day public comment period. In the July 31, 2003, **Federal Register** (68 FR 44961), we published a notice that the Alaska Subsistence Harvest Survey Information Collection Forms were submitted to OMB for approval under the Paperwork Reduction Act, with a 30-day public comment period. OMB approved the information collection on October 2, 2003, and assigned OMB control number 1018–0124, which expires on October 31, 2006.

How Did the Service Develop the Methods and Means Prohibitions, and What Is Proposed to Change for 2006?

In development of the initial regulations (68 FR 6697), the Co-management Council encouraged the Service to adopt the existing methods and means prohibitions that occur in the Federal (50 CFR 20.21) and Alaska (5AAC92.100) migratory bird hunting regulations. We included some exceptions to the Federal regulations in the initial regulations and include some in this proposed rule to allow the continuation of customary and traditional spring harvest methods, but not the creation of new proposed traditions. In this proposed rule, we have incorporated the Yukon/Kuskokwim Delta region's request to prohibit use of private or chartered aircraft for hunting or transporting hunters, except for transportation between community airstrips, in Unit 18.

How Did the Service Decide the List of Birds Open To Harvest, and What Is Proposed to Change for 2006?

The Service believes it is necessary to develop a list of bird species that would be open to subsistence harvest. The original list was compiled from subsistence harvest data, with several species added based on their presence in Alaska. The original intent was for the list to be reviewed by the regional management bodies as a check list. The list was adopted by the Co-management Council as part of the guidelines for the 2003 season. Most of the regions adopted the list as written; however, two regions created their own lists. One regional representative explained that it would take much more time than was available for his region to reduce the list and that, once a bird was removed, returning it to the list would be more difficult later. Going with the original list was viewed as protecting hunters from prosecution for the take of an unlisted bird. To understand this rationale, one must be aware that subsistence hunting is generally opportunistic and does not usually target individual species. Native language names for birds often group closely related species, with no separate names for species within these groups. Also, preferences for individual species differ greatly between villages and individual hunters. As a result, regions are hesitant to remove birds from the list open to harvest until they are certain the species are not taken for subsistence use. The list therefore contains some species that are taken infrequently and opportunistically, but this is still part of the subsistence tradition. The Co-management Council initially decided to call this list ''potentially harvested birds'' versus ''traditionally harvested birds'' because a detailed written documentation of the customary and traditional use patterns for the species listed had not yet been conducted. However, this terminology was leading to some confusion, so the Service renamed the list ''subsistence birds'' to cover the birds open to harvest.

The ''customary and traditional use'' of a wildlife species has been defined in Federal regulations (50 CFR 100.4) as a long-established, consistent pattern of use, incorporating beliefs and customs that have been transmitted from generation to generation. Much of the customary and traditional use information has not been documented in written form, but exists in the form of oral histories from elders, traditional stories, harvest methods taught to children, and traditional knowledge of the birds' natural history shared within a village or region. The primary source of quantitative data on customary and traditional use of the harvested bird species comes from Alaska subsistence migratory bird harvest surveys conducted by Service personnel and contractors and transferred to a computerized database. Because of difficulties in bird species identification, shorebird harvest information has been lumped into ''large shorebird'' and ''small shorebird'' categories. In reality, Alaska subsistence harvests are also conducted in this manner, generally with no targeting or even recognition of individual shorebird species in most cases.

Based on conservation concerns, we propose to close the harvest of black brant in the Izembek and Moffet lagoons on August 16 to protect brant during the early fall migration staging in the area. Izembek Lagoon is an internationally recognized staging area that attracts over 90% of black brant in fall. Black brant

are well below the population objective defined by the Pacific Flyway Council. Population size has declined in recent years and has triggered restrictive harvest limits throughout the Pacific Flyway.

Based on requests by the Association of Village Council Presidents and the Yukon Delta National Wildlife Refuge, two special closures are proposed within the Yukon/Kuskokwim Delta region. The first proposal is to implement a special black brant and cackling goose season hunting closure from the period when egg laying begins until young birds are fledged, with the closure dates to be announced by the Alaska Regional Director or his designee, after consultation with field biologists, the Association of Village Council President's Waterfowl Conservation Committee. This closure represents a conservation measure to maximize survival of locally hatched black brant and cackling geese. The second proposal is to implement an area closure of the following goose colonies: Kokechik Bay, Tutakoke River, Kigigak Island, Baird Peninsula, and Baird Island. These colonies would be closed to all hunting and eggs gathering from the period of nest initiation until young birds are fledged. Closure dates are proposed to be announced by the Alaska Regional Director or his designee, after consultation with field biologists, the Association of Village Council President's Waterfowl Conservation Committee. This area closure is a conservation measure to prevent disturbance by subsistence users in these five key black brant nesting areas. This closure is primary for the benefit of black brant and cackling geese, but would also benefit emperor geese, spectacled eiders and many other waterfowl species.

At the request of the North Slope Borough Fish and Game Management Committee, the Co-management Council recommended continuing the 2005 provision into 2006 to allow subsistence use of yellow-billed loons inadvertently caught in subsistence fishing (gill) nets on the North Slope. Justification given by the proponent was that yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. The Service Regulations Committee originally met on July 29, 2004, and set a maximum of 20 yellow-billed loons inadvertently caught annually in the North Slope Region for the 2005 season. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. In addition, the North Slope Borough will ask fishermen, through announcements on the radio and through personal contact, to report all entanglements of loons to better estimate the levels of injury or mortality caused by gill nets. This provision to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets is subject to annual review and has been proposed for renewal in 2006, as part of Subpart D—Annual Regulations Governing Subsistence Harvest.

How Does the Service Address the Birds of Conservation Concern Relative to the Subsistence Harvest?

Birds of Conservation Concern (BCC) 2002 is the latest document in a continuing effort by the Service to assess and prioritize bird species for conservation purposes. It was published in the **Federal Register** on February 6, 2003 (68 FR 6179). The BCC list identifies bird species at risk because of inherently small populations, restricted ranges, severe population declines, or imminent threats. The species listed need increased conservation attention to maintain or stabilize populations. The legal authority for this effort is the Fish and Wildlife Conservation Act (FWCA) of 1980, as amended. Section 13(a)(3) of the FWCA, 16 U.S.C. 2912(a)(3), requires the Secretary of the Interior through the Service, to ''identify species, subspecies and populations of all migratory nongame birds that, without additional conservation actions, are likely to become candidates for listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543).''

The Co-management Council will continually review the list of subsistence birds. As appropriate, the Council will elevate hunter awareness of species that may have small or declining populations in an effort to directly involve subsistence hunters in conserving these vulnerable species.

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. If you wish to comment, you may submit comments by any one of several methods. You may mail, fax, hand-deliver, or email comments to the address indicated under the caption **ADDRESSES.**

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we will also withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. You may inspect comments received on the proposed regulations during normal business hours at the Service's office in Anchorage, Alaska.

In developing the final rule, we will consider each comment received during the public comment period. In the final rule, we may not respond in detail to each comment received during the comment period, but we will summarize all comments received and respond to them.

Statutory Authority

We derive our authority to issue these regulations from the four migratory bird treaties with Canada, Mexico, Japan, and Russia and from the Migratory Bird Treaty Act of 1918 (16 U.S.C. 703 *et seq.*), that implements these treaties. Specifically, these regulations are issued pursuant to 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with these four treaties, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments regarding how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

The Office of Management and Budget (OMB) has determined that this document is not a significant rule subject to OMB review under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The rule does not provide for new or additional hunting opportunities and therefore will have minimal economic or environmental impact. This rule benefits those participants who engage in the subsistence harvest of migratory birds in Alaska in two identifiable ways: first, participants receive the consumptive value of the birds harvested; and second, participants get the cultural benefit associated with the maintenance of a subsistence economy and way of life. The Service can estimate the consumptive value for birds harvested under this rule but does not have a dollar value for the cultural benefit of maintaining a subsistence economy and way of life.

The economic value derived from the consumption of the harvested migratory birds has been estimated using the results of a paper by Robert J. Wolfe titled ''Subsistence Food Harvests in Rural Alaska, and Food Safety Issues'' (August 13, 1996). Using data from Wolfe's paper and applying it to the areas that will be included in this process, we determined a maximum economic value of $6 million. This is the estimated economic benefit of the consumptive part of this rule for participants in subsistence hunting. The cultural benefits of maintaining a subsistence economy and way of life can be of considerable value to the participants, and these benefits are not included in this figure.

b. This rule will not create inconsistencies with other agencies' actions. We are the Federal agency responsible for the management of migratory birds, coordinating with the State of Alaska's Department of Fish and Game on management programs within Alaska. The State of Alaska is a member of the Alaska Migratory Bird Co-management Council.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The rule does not affect entitlement programs.

d. This rule will not raise novel legal or policy issues. The subsistence harvest regulations will go through the same national regulatory process as the existing migratory bird hunting regulations in 50 CFR part 20.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Executive Order 12866 section above.

a. This rule does not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

c. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified pursuant to the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. A statement containing the information required by this Act is therefore not necessary. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405, March 28, 2000) we identified 12 partner organizations (Alaska Native non-profits and local governments) to be responsible for administering the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995 and has been found to contain no information collection requirements. We have, however, received OMB approval of associated voluntary annual household surveys used to determine levels of subsistence take. The OMB control number for the information collection is 1018–0124, which expires on October 31, 2006. 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.

Federalism Effects

As discussed in the Executive Order 12866 and Unfunded Mandates Reform Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13132. We worked with the State of Alaska on development of these regulations.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of Section 3 of the Order.

Takings Implication Assessment

This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. Therefore, in accordance with Executive Order 12630, this rule does not have significant takings implications.

Government-to-Government Relations With Native American Tribal Governments

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249, November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we have consulted with Alaska tribes and evaluated the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for tribal members, as well as for other indigenous inhabitants.

Endangered Species Act Consideration

Prior to issuance of annual spring and summer subsistence regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that harvesting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitats and that it is consistent with conservation programs for those species. Consultations under Section 7 of this Act conducted in connection with the environmental assessment for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the Section 7 consultation is a public document available for public inspection at the address indicated under the caption **ADDRESSES.**

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2006 Spring/Summer Harvest,'' issued September 5, 2005. Copies are available from the address indicated under the caption **ADDRESSES.**

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule only allows for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest, it is not a significant regulatory action under Executive Order 12866 which requires federal agencies to write regulations that are easy to understand. Consequently it is not expected to significantly affect energy supplies, distribution and use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

For the reasons set out in the preamble, we propose to amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart C—General Regulations Governing Subsistence Harvest

2. In subpart C, amend § 92.20 by adding paragraph (j) to read as follows:

§ 92.20 Methods and means.

* * * * *

(j) Using private or chartered aircraft for hunting or transporting hunters, except for transportation between community airstrips (Unit 18, Yukon/Kuskokwim Delta Region only).

Subpart D—Annual Regulations Governing Subsistence Harvest

3. In Subpart D, add §§ 92.31 through 92.33 to read as follows:

§ 92.31 Migratory bird species closed to subsistence harvest.

(a) Because of conservation concerns, you may not harvest birds or gather eggs from the following species in 2006:

(1) Spectacled Eider (*Somateria fischeri*).

(2) Steller's Eider (*Polysticta stelleri*).

(3) Emperor Goose (*Chen canagica*).

(4) Aleutian Canada Goose (*Branta canadensis leucopareia*)—Semidi Islands only.

(5) Yellow-billed Loons (*Gavia adamsii*)—Except in the North Slope Region only, a total of up to 20 yellow-billed loons inadvertently caught in fishing nets may be kept for subsistence purposes.

(b) In addition, you may not gather eggs from the following species in 2006:

(1) Cackling Canada Goose (*Branta canadensis minima*).

(2) Black Brant (*Branta bernicla nigricans*)—in the Yukon/Kuskokwim Delta and North Slope regions only.

§ 92.32 Subsistence migratory bird species.

You may harvest birds or gather eggs from the following species, listed in taxonomic order, within all included regions. When birds are listed only to the species level, all subspecies existing in Alaska are open to harvest.

(a) Family Anatidae.

(1) Greater White-fronted Goose (*Anser albifrons*).

(2) Snow Goose (*Chen caerulescens*).

(3) Lesser Canada Goose (*Branta canadensis parvipes*).

(4) Taverner's Canada Goose (*Branta canadensis taverneri*).

(5) Aleutian Canada Goose (*Branta canadensis leucopareia*)—except in the Semidi Islands.

(6) Cackling Canada Goose (*Branta canadensis minima*)—except no egg gathering is permitted.

(7) Black Brant (*Branta bernicla nigricans*)—except no egg gathering is permitted in the Yukon/Kuskokwim Delta and the North Slope regions.

(8) Tundra Swan (*Cygnus columbianus*)—except in Units 9(D) and 10.

(9) Gadwall (*Anas strepera*).

(10) Eurasian Wigeon (*Anas penelope*).

(11) American Wigeon (*Anas americana*).
(12) Mallard (*Anas platyrhynchos*).
(13) Blue-winged Teal (*Anas discors*).
(14) Northern Shoveler (*Anas clypeata*).
(15) Northern Pintail (*Anas acuta*).
(16) Green-winged Teal (*Anas crecca*).
(17) Canvasback (*Aythya valisineria*).
(18) Redhead (*Aythya americana*).
(19) Ring-necked Duck (*Aythya collaris*).
(20) Greater Scaup (*Aythya marila*).
(21) Lesser Scaup (*Aythya affinis*).
(22) King Eider (*Somateria spectabilis*).
(23) Common Eider (*Somateria mollissima*).
(24) Harlequin Duck (*Histrionicus histrionicus*).
(25) Surf Scoter (*Melanitta perspicillata*).
(26) White-winged Scoter (*Melanitta fusca*).
(27) Black Scoter (*Melanitta nigra*).
(28) Long-tailed Duck (*Clangula hyemalis*).
(29) Bufflehead (*Bucephala albeola*).
(30) Common Goldeneye (*Bucephala clangula*).
(31) Barrow's Goldeneye (*Bucephala islandica*).
(32) Hooded Merganser (*Lophodytes cucullatus*).
(33) Common Merganser (*Mergus merganser*).
(34) Red-breasted Merganser (*Mergus serrator*).
(b) Family Gaviidae.
(1) Red-throated Loon (*Gavia stellata*).
(2) Arctic Loon (*Gavia arctica*).
(3) Pacific Loon (*Gavia pacifica*).
(4) Common Loon (*Gavia immer*).
(5) Yellow-billed Loon (*Gavia adamsii*)—In the North Slope Region only, a total of up to 20 yellow-billed loons inadvertently caught in fishing nets may be kept for subsistence purposes.
(c) Family Podicipedidae.
(1) Horned Grebe (*Podiceps auritus*).
(2) Red-necked Grebe (*Podiceps grisegena*).
(d) Family Procellariidae.
(1) Northern Fulmar (*Fulmarus glacialis*).
(2) [Reserved].
(e) Family Phalacrocoracidae.
(1) Double-crested Cormorant (*Phalacrocorax auritus*).
(2) Pelagic Cormorant (*Phalacrocorax pelagicus*).
(f) Family Gruidae.
(1) Sandhill Crane (*Grus canadensis*).
(2) [Reserved].
(g) Family Charadriidae.
(1) Black-bellied Plover (*Pluvialis squatarola*).
(2) Common Ringed Plover (*Charadrius hiaticula*).
(h) Family Haematopodidae.
(1) Black Oystercatcher (*Haematopus bachmani*).
(2) [Reserved].
(i) Family Scolopacidae.
(1) Greater Yellowlegs (*Tringa melanoleuca*).
(2) Lesser Yellowlegs (*Tringa flavipes*).
(3) Spotted Sandpiper (*Actitis macularia*).
(4) Bar-tailed Godwit (*Limosa lapponica*).
(5) Ruddy Turnstone (*Arenaria interpres*).
(6) Semipalmated Sandpiper (*Calidris pusilla*).
(7) Western Sandpiper (*Calidris mauri*).
(8) Least Sandpiper (*Calidris minutilla*).
(9) Baird's Sandpiper (*Calidris bairdii*).
(10) Sharp-tailed Sandpiper (*Calidris acuminata*).
(11) Dunlin (*Calidris alpina*).
(12) Long-billed Dowitcher (*Limnodromus scolopaceus*).
(13) Common Snipe (*Gallinago gallinago*).
(14) Red-necked phalarope (*Phalaropus lobatus*).
(15) Red phalarope (*Phalaropus fulicaria*).
(j) Family Laridae.
(1) Pomarine Jaeger (*Stercorarius pomarinus*).
(2) Parasitic Jaeger (*Stercorarius parasiticus*).
(3) Long-tailed Jaeger (*Stercorarius longicaudus*).
(4) Bonaparte's Gull (*Larus philadelphia*).
(5) Mew Gull (*Larus canus*).
(6) Herring Gull (*Larus argentatus*).
(7) Slaty-backed Gull (*Larus schistisagus*).
(8) Glaucous-winged Gull (*Larus glaucescens*).
(9) Glaucous Gull (*Larus hyperboreus*).
(10) Sabine's Gull (*Xema sabini*).
(11) Black-legged Kittiwake (*Rissa tridactyla*).
(12) Red-legged Kittiwake (*Rissa brevirostris*).
(13) Ivory Gull (*Pagophila eburnea*).
(14) Arctic Tern (*Sterna paradisaea*).
(15) Aleutian Tern (*Sterna aleutica*).
(k) Family Alcidae.
(1) Common Murre (*Uria aalge*).
(2) Thick-billed Murre (*Uria lomvia*).
(3) Black Guillemot (*Cepphus grylle*).
(4) Pigeon Guillemot (*Cepphus columba*).
(5) Cassin's Auklet (*Ptychoramphus aleuticus*).
(6) Parakeet Auklet (*Aethia psittacula*).
(7) Least Auklet (*Aethia pusilla*).
(8) Whiskered Auklet (*Aethia pygmaea*).
(9) Crested Auklet (*Aethia cristatella*).
(10) Rhinoceros Auklet (*Cerorhinca monocerata*).
(11) Horned Puffin (*Fratercula corniculata*).
(12) Tufted Puffin (*Fratercula cirrhata*).
(l) Family Strigidae.
(1) Great Horned Owl (*Bubo scandiacus*).
(2) Snowy Owl (*Nyctea scandiaca*).

§ 92.33 Region-specific regulations.

The 2006 season dates for the eligible subsistence regions are as follows:
(a) Aleutian/Pribilof Islands Region.
(1) Northern Unit (Pribilof Islands):
(i) Season: April 2–June 30.
(ii) Closure: July 1–August 31.
(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):
(i) Season: April 2–June 15 and July 16–August 31.
(ii) Closure: June 16–July 15.
(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.
(3) Western Unit (Umnak Island west to and including Attu Island):
(i) Season: April 2–July 15 and August 16–August 31.
(ii) Closure: July 16–August 15.
(b) Yukon/Kuskokwim Delta Region.
(1) Season: April 2–August 31.
(2) Closure: 30-day closure dates to be announced by the Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.
(4) Special Area Closure: (i) The following described goose nesting

colonies are closed to all hunting and egg gathering from the period of nest initiation until young birds are fledged:

(A) Kokechik Bay Colony—bounded by 61.61°N to 61.67°N and 165.83°W to 166.08°W;

(B) Tutakoke River Colony—bounded by 61.20°N to 61.28°N and 165.08°W to 165.13°W;

(C) Kigigak Island Colony '' bounded by island's edge;

(D) Baird Peninsula Colony—bounded by 60.87°N to 60.91°N and 164.65°W to 165.80°W, and

(E) Baird Island Colony—bounded by island's edge.

(ii) Closure dates to be announced by the Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) Bristol Bay Region.

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) Bering Strait/Norton Sound Region.

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) Kodiak Archipelago Region, except for the Kodiak Island roaded area, is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 20 and July 22–August 31; egg gathering: May 1–June 20.

(2) Closure: June 21–July 21.

(f) Northwest Arctic Region.

(1) Season: April 2–August 31 (in general); waterfowl egg gathering May 20–June 9; seabird egg gathering July 3–July 12; molting/non-nesting waterfowl July 1–July 31.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) North Slope Region.

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30′S and south of the latitude line 70°45′E to west bank of the Ikpikpuk River, and everything south of the latitude line 69°45′E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30'S and north of the latitude line 70°45′E to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45′E between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders and April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, a total of up to 20 yellow-billed loons may be caught inadvertently in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently caught while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(h) Interior Region.

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14.

(2) Closure: June 15–July 15.

(i) Upper Copper River (Harvest Area: State of Alaska Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) Note: The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) Gulf of Alaska Region.

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) Cook Inlet (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) Season: April 2–May 31–That portion of Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31–That portion of Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) Southeast Alaska.

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR Part 100.3]).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Pt. Riou], and coastal lands and islands bordering the Gulf of Alaska from Pt. Manby southeast to Dry Bay.

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

Dated: September 14, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–18972 Filed 9–21–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
September 22, 2005

Part IV

The President

Notice of September 21, 2005—Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

Federal Register
Vol. 70, No. 183
Thursday, September 22, 2005

Presidential Documents

Title 3—

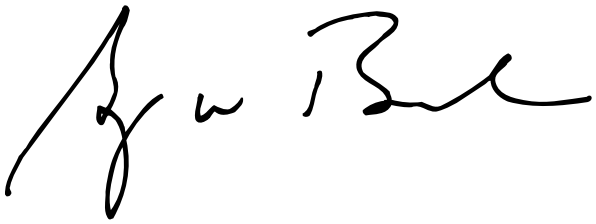
The President

Notice of September 21, 2005

Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, I declared a national emergency with respect to persons who commit, threaten to commit, or support terrorism, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). I took this action to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks in New York, in Pennsylvania, and against the Pentagon committed on September 11, 2001, and the continuing and immediate threat of further attacks against United States nationals or the United States. Because the actions of these persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the United States, the national emergency declared on September 23, 2001, and the measures adopted on that date to deal with that emergency, must continue in effect beyond September 23, 2005. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
September 21, 2005.

[FR Doc. 05–19157
Filed 9–21–05; 1:07 pm]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 70, No. 183

Thursday, September 22, 2005

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

51999–52282 1
52283–52892 2
52893–53042 6
53043–53294 7
53295–53536 8
53537–53722 9
53723–53900 12
53901–54234 13
54235–54468 14
54469–54608 15
54609–54832 16
54833–55020 19
55021–55224 20
55225–55512 21
55513–55704 22

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7463 (See Notice of September 8, 2005) 54229
7921 52281
7922 53719
7923 53721
7924 54227
7925 54233
7926 54461
7927 54463
7928 54465
7929 54467
7930 55021
7931 55505
7932 55507
7933 55509
7934 55511

Executive Order:
13223 (See Notice of September 8, 2005) 54229
13224 (See Notice of September 21, 2005) 55703
13235 (See Notice of September 8, 2005) 54229
13253 (See Notice of September 8, 2005) 54229
13286 (See Notice of September 8, 2005) 54229

Administrative Orders:
Memorandum:
Memorandum of September 9. 2005 55015
Presidential Determinations:
No. 2005–33 of August 29, 2005 55013
No. 2005–34 of September 9, 2005 55011
No. 2004–45 of September 10, 2004 (See Presidential Determination No. 2005–35 of September 12, 2005) 54607
No. 2005–35 of September 12, 2005 54607
Notices:
Notice of September 21, 2005 55703

5 CFR

Proposed Rules:
250 54658

7 CFR

97 54609
905 54235
922 54833
946 53723
966 53537
993 54469
1216 55225
1405 52283
Proposed Rules:
205 54660
319 55036
987 53737
1005 55458
1007 55458
1435 53103

8 CFR

Proposed Rules:
Ch. I 52037

9 CFR

310 53043
318 53043
Proposed Rules:
3 55308
94 .....52158, 55513
381 53582

10 CFR

50 52893
72 .....55023, 55513
300 54835
Proposed Rules:
1 52942
2 52942
10 52942
19 52942
20 52942
21 52942
25 52942
26 52942
50 52942
51 52942
52 52942
54 .....52942, 54310
55 52942
63 53313
72 .....52942, 55036
73 52942
75 52942
95 52942
140 52942
170 52942

12 CFR

607 54471
611 53901

612 53901
614 ....53901, 54471
615 ....53901, 54471
620 ....53901, 54471
627 55513
703 55516
712 55227
790 55516
791 55516
Proposed Rules:
XVII 53105
225 53320
741 55308

14 CFR

3 54822
39 ....51999, 52001, 52004, 52005, 52009, 52285, 52899, 52902, 53051, 53053, 53056, 53058, 53295, 53540, 53543, 53547, 53550, 53554, 53556, 53558, 53725, 53910, 53912, 53915, 54242, 54244, 54247, 54249, 54251, 54253, 54472, 54474, 54612, 54616, 54618, 54622, 54835, 55228, 55230, 55233, 55234, 55236, 55239, 55242, 55245, 55248, 55517, 55519, 55524, 55529
61 ....53560, 54810
63 54810
65 54810
71 ....52012, 52288, 52903, 52905, 53562, 53917, 53918, 53919, 53920, 53921, 54837, 55250, 55531, 55533
73 54837
95 52013
97 ....52288, 54624
121 54810
135 54810
Proposed Rules:
39 ....52040, 52041, 52043, 52046, 52943, 52945, 52947, 53106, 53586, 53739, 53743, 54311, 54314, 54316, 54318, 54321, 54484, 54486, 54668, 54671, 54674, 54677, 54852, 54854, 54856, 55310, 55315, 55321, 55323, 55598, 55602, 55604
71 ....53594, 53595, 53597, 53598, 55325
121 ....54454, 55492
125 54454
135 54454
382 53108

15 CFR

736 54626
738 54626
742 54626
744 54626
748 54626
995 52906

16 CFR

4 53296

17 CFR

242 52014
275 54629
Proposed Rules:
36 54323
37 54323
38 54323
39 54323
40 54323

18 CFR

Proposed Rules:
38 53117
153 52328
157 52328
375 52328

19 CFR

7 53060
10 53060
11 53060
12 53060
18 53060
19 53060
24 53060
54 53060
101 53060
102 53060
111 53060
114 53060
123 53060
128 53060
132 53060
134 53060
141 53060
145 53060
146 53060
148 53060
151 53060
152 53060
177 53060
181 53060
191 53060
Proposed Rules:
101 52336

20 CFR

Proposed Rules:
404 53323
416 ....52949, 53323

21 CFR

1 53728
189 53063
510 52291
558 52291
700 53063
866 53069
872 55026
Proposed Rules:
210 55038
211 55038
212 55038
310 52050
880 53326

22 CFR

41 52292
51 53922
Proposed Rules:
Ch. I 52037

23 CFR

1327 52296

24 CFR

891 54200
990 54984
Proposed Rules:
291 53480
320 54450

26 CFR

1 ....52299, 54631
54 55500
Proposed Rules:
1 ....52051, 52952, 53599, 53973, 54324, 54859
31 54680
53 53599
301 ....54324, 54681, 54687

27 CFR

9 ....53297, 53300
Proposed Rules:
4 53328
24 53328
27 53328

28 CFR

Proposed Rules:
16 53133

29 CFR

1910 53925
2560 55500
2590 55500
4022 54477
4044 54477
Proposed Rules:
1404 53134

30 CFR

57 55019
938 52916
Proposed Rules:
57 ....53280, 55018
250 52953
906 54490

31 CFR

575 54258
Proposed Rules:
103 55217

32 CFR

199 55251
706 52302
Proposed Rules:
310 53135

33 CFR

100 ....52303, 52305, 54478
117 ....52307, 52917, 53070, 54637
165 ....52308, 53070, 53562, 54447, 54479, 54838, 55252, 55534, 55536, 55539
Proposed Rules:
100 ....52052, 52054, 52338
117 ....52340, 52343, 53328, 53604
165 55607

37 CFR

1 54259
3 54259
Proposed Rules:
Ch. III 53973

38 CFR

14 52015
41 52248
49 52248

39 CFR

265 52016
Proposed Rules:
20 ....54493, 54510

40 CFR

49 54638
51 ....53930, 55212
52 ....52919, 52926, 53275, 53304, 53564, 53930, 53935, 53936, 53939, 53941, 54267, 54639, 54840, 54842, 55212, 55541, 55545, 55550, 55559, 55663
60 55568
62 53567
81 ....52926, 55541, 55545, 55550, 55559
124 53420
174 55254
180 ....53944, 54275, 54281, 54640, 55260, 55263, 55269, 55272, 55277, 55282, 55286, 55293
228 53729
260 53420
261 53420
267 53420
270 53420
300 ....52018, 54286, 55296
Proposed Rules:
26 53838
52 ....52956, 52960, 53329, 53605, 53746, 53974, 53975, 54324, 55062, 55610, 55611, 55613
62 53615
81 ....52960, 53605, 53746, 55610, 55611, 55613
82 55480
136 52485
180 55326
197 54325
300 ....54327, 55329
372 53752

41 CFR

301–10 54481

42 CFR

403 52019
414 52930
422 52023
Proposed Rules:
405 52056
410 52056
411 52056
413 52056
414 52056
426 52056

43 CFR

3100 53072
3834 52028
Proposed Rules:
423 54214
429 54214

44 CFR

64 ....52935, 54481, 54844
65 ....52936, 52938, 55028, 55029
67 ....52939, 55031
Proposed Rules:
67 ....52961, 52962, 52976, 55071, 55073

45 CFR

61 53953
160 54293

46 CFR

296 55581

Proposed Rules:

531 ....52345, 53330

47 CFR

1 55300
2 ....53074, 55301
25 53074
53 55301
54 55300
64 ....54294, 54298, 54300, 55302
73 ....53074, 53078, 54301
76 53076
90 53074
97 53074

Proposed Rules:

Ch. I 53136
64 53137
73 ....53139, 54334

48 CFR

205 54651
211 53955
212 53955
217 54651
225 52030
232 52031
237 52032
242 52034
252 ....52030, 52031, 52032, 53716, 53955
1802 52940
1852 52941

Proposed Rules:

1 54878
2 54878
17 54878
31 54878
32 54878
35 54878
42 54878
45 54878
49 54878
51 54878
52 54878
53 54878
207 54693
216 54694
217 54695
239 ....54697, 54698
252 ....54695, 54698
9904 53977

49 CFR

571 ....53079, 53569
578 53308
585 53101
588 53569

Proposed Rules:

571 53753
572 54889

50 CFR

17 ....52310, 52319
20 ....54483, 55666
32 54146
226 ....52488, 52630
300 52324
600 54652
648 ....53311, 53580, 53969, 54302
660 ....52035, 54851, 55302, 55303
679 ....52325, 52326, 53101, 53312, 53970, 53971, 54656, 55305, 55306

Proposed Rules:

Ch. I 54700
17 ....52059, 53139, 53141, 54106, 54335, 54701
92 55692
600 53979
622 ....53142, 53979, 54518
635 53146
679 52060
697 52346

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT SEPTEMBER 22, 2005

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Peanut promotion, research, and information order; amendment; published 9-21-05

DEFENSE DEPARTMENT

Grant and agreement regulations; OMB policy directives; published 8-23-05

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationry sources:

Commercial and industrial solid waste incineration units; definitions; published 9-22-05

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Manasquan Inlet, NJ; published 9-15-05

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

California tiger salamander; published 8-23-05

Migratory bird hunting:

Iron-tungsten-nickel shot approval as nontoxic for hunting waterfowl and coots; published 8-23-05

Late-season migratory bird hunting regulations; final frameworks; published 9-22-05

NATIONAL CREDIT UNION ADMINISTRATION

Organization, functions, and authority delegations:

Technical corrections; published 9-22-05

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 9-7-05

Dassault; published 9-7-05

Israel Aircraft Industries, Ltd.; published 9-7-05

COMMENTS DUE NEXT WEEK

AGENCY FOR INTERNATIONAL DEVELOPMENT

Assistance awards to U.S. non-Governmental organizations; marking requirements; Open for comments until further notice; published 8-26-05 [FR 05-16698]

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Fresh fruit and vegetable terminal market inspection services; fees increase; comments due by 9-26-05; published 8-25-05 [FR 05-16863]

Grapes grown in—

California; comments due by 9-25-05; published 7-25-05 [FR 05-14673]

Milk marketing orders:

Mideast; comments due by 9-26-05; published 7-27-05 [FR 05-14769]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

Child and Adult Care Food Program—

For-profit center participation; comments due by 9-26-05; published 7-27-05 [FR 05-14811]

AGRICULTURE DEPARTMENT

Farm Service Agency

Agency appeal procedures; comments due by 9-26-05; published 7-27-05 [FR 05-14767]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Reports and guidance documents; availability, etc.:

National Handbook of Conservation Practices; Open for comments until further notice; published 5-9-05 [FR 05-09150]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Reef fish, spiny lobster, queen conch and coral; comments due by 9-28-05; published 9-13-05 [FR 05-17945]

West Coast States and Western Pacific fisheries—

Pacific whiting; comments due by 9-26-05; published 8-31-05 [FR 05-17342]

COMMODITY FUTURES TRADING COMMISSION

Commodity Futures Modernization of 2000; implementation:

Trading facilities; exempt markets, derivatives transaction execution facilities and designated contract markets, etc.; technical and clarifying amendments; comments due by 9-26-05; published 9-14-05 [FR 05-18174]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Business restructuring costs-delegation of authority to make determinations relating to payment; comments due by 9-26-05; published 7-26-05 [FR 05-14625]

Critical safety items; notification requirements; comments due by 9-30-05; published 8-1-05 [FR 05-15156]

Pilot Mentor-Protege Program; Open for comments until further notice; published 12-15-04 [FR 04-27351]

Sole source 8 (a) awards to small business concerns owned by Native Hawaiian organizations; comments due by 9-26-05; published 7-26-05 [FR 05-14624]

Transportation; comments due by 9-26-05; published 7-26-05 [FR 05-14626]

Federal Acquisition Regulation (FAR):

HUBZone certification; confirmation; comments due by 9-26-05; published 7-27-05 [FR 05-14669]

Information technology; definition; comments due by 9-26-05; published 7-27-05 [FR 05-14666]

Performance of Commercial Activities (Circular A-76); comments due by 9-26-05; published 7-26-05 [FR 05-14569]

DELAWARE RIVER BASIN COMMISSION

Water Quality Regulations, Water Code, and Comprehensive Plan:

Lower Delaware River; special protection waters classification; comments due by 9-26-05; published 8-22-05 [FR 05-16526]

EDUCATION DEPARTMENT

Elementary and secondary education:

State Charter School Facilities Incentive Program; comments due by 9-26-05; published 8-26-05 [FR 05-17049]

Grants and cooperative agreements; availability, etc.:

Vocational and adult education—

Smaller Learning Communities Program; Open for comments until further notice; published 2-25-05 [FR E5-00767]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Reinforced plastic composites production; comments due by 9-26-05; published 8-25-05 [FR 05-16700]

Air programs:

Stratospheric ozone protection—

Methyl bromide; critical use exemption process; supplemental request; comments due by 9-29-05; published 8-30-05 [FR 05-17190]

Methyl bromide; critical use exemption process; supplemental request; comments due by 9-29-05; published 8-30-05 [FR 05-17191]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 9-29-05; published 8-30-05 [FR 05-17196]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

2,4-D; comments due by 9-26-05; published 7-27-05 [FR 05-14886]

Lignosulonates; comments due by 9-26-05; published 7-27-05 [FR 05-14887]

Pinoxaden; comments due by 9-26-05; published 7-27-05 [FR 05-14896]

Propiconazole; comments due by 9-26-05; published 7-27-05 [FR 05-14599]

Pymetrozine; comments due by 9-26-05; published 7-27-05 [FR 05-14598]

Water pollution control:

National Pollutant Discharge Elimination System—

Concentrated animal feeding operations in New Mexico and Oklahoma; general permit for discharges; Open for comments until further notice; published 12-7-04 [FR 04-26817]

Texas; general permit for territorial seas; Open for comments until further notice; published 9-6-05 [FR 05-17614]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Committees; establishment, renewal, termination, etc.:

Technological Advisory Council; Open for comments until further notice; published 3-18-05 [FR 05-05403]

Common carrier services:

Hearing aid-compatible telephones; comments due by 9-26-05; published 7-27-05 [FR 05-14614]

Interconnection—

Incumbent local exchange carriers unbounding obligations; local competition provisions; wireline services offering advanced telecommunications capability; Open for comments until further notice; published 12-29-04 [FR 04-28531]

FEDERAL ELECTION COMMISSION

Bipartisan Campaign Reform Act; implementation:

Certain salaries and wages; State, district, and local party committee payment; comments due by 9-29-05; published 8-30-05 [FR 05-17156]

Federal election activity; definition; comments due by 9-29-05; published 8-30-05 [FR 05-17155]

Federal Election Campaign Act:

Electioneering communications; definitions; comment request; comments due by 9-30-05; published 8-24-05 [FR 05-16785]

FEDERAL TRADE COMMISSION

Industry guides:

Jewelry, precious metals, and pewter industries; comments due by 9-28-05; published 7-6-05 [FR 05-13285]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

HUBZone certification; confirmation; comments due by 9-26-05; published 7-27-05 [FR 05-14669]

Information technology; definition; comments due by 9-26-05; published 7-27-05 [FR 05-14666]

Performance of Commercial Activities (Circular A-76); comments due by 9-26-05; published 7-26-05 [FR 05-14569]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare and medicaid:

Physician fee schedule (CY 2006); payment policies and relative value units; comments due by 9-30-05; published 8-8-05 [FR 05-15370]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Organization and functions; field organization, ports of entry, etc.:

Tri-Cities area including Tri-Cities Regional Airport, VA and TN; port of entry establishment and user-fee status termination; comments due by 9-27-05; published 7-29-05 [FR 05-15045]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Anchorage regulations:

Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

Drawbridge operations:

Florida; comments due by 10-1-05; published 8-16-05 [FR 05-16180]

Tennessee; comments due by 9-26-05; published 8-25-05 [FR 05-16859]

Wisconsin; comments due by 9-26-05; published 8-10-05 [FR 05-15779]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Homeless assistance; excess and surplus Federal properties; Open for comments until further notice; published 8-5-05 [FR 05-15251]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species permit applications

Recovery plans—

Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]

Endangered and threatened species:

Critical habitat designations—

Gila chub; comments due by 9-30-05; published 8-31-05 [FR 05-17450]

San Jacinto Valley crownscale; comments due by 9-30-05; published 8-31-05 [FR 05-17451]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Missouri; comments due by 9-29-05; published 8-22-05 [FR 05-16573]

Texas; comments due by 9-30-05; published 8-31-05 [FR 05-17337]

West Virginia; comments due by 9-26-05; published 8-26-05 [FR 05-17002]

JUSTICE DEPARTMENT

Drug Enforcement Administration

Schedules of controlled substances:

Embutramide; placement into Schedule III;

comments due by 9-28-05; published 8-29-05 [FR 05-17163]

JUSTICE DEPARTMENT

Justice Programs Office

Public safety officers' death and disability benefits:

Benefits program; comments due by 9-26-05; published 7-26-05 [FR 05-14659]

JUSTICE DEPARTMENT

Prisons Bureau

Institutional management:

Inmate discipline and special housing units; comments due by 9-26-05; published 7-26-05 [FR 05-14637]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

HUBZone certification; confirmation; comments due by 9-26-05; published 7-27-05 [FR 05-14669]

Information technology; definition; comments due by 9-26-05; published 7-27-05 [FR 05-14666]

Performance of Commercial Activities (Circular A-76); comments due by 9-26-05; published 7-26-05 [FR 05-14569]

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:

Insurance requirements; comments due by 9-27-05; published 7-29-05 [FR 05-14807]

Regulatory Flexibility Program; comments due by 9-27-05; published 7-29-05 [FR 05-14805]

Uninsured secondary capital accounts; comments due by 9-27-05; published 7-29-05 [FR 05-14806]

NCUA examiners; post-employment restrictions; comments due by 9-27-05; published 7-29-05 [FR 05-14808]

NUCLEAR REGULATORY COMMISSION

Environmental statements; availability, etc.:

Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION

Disaster loan areas:

Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Trade Representative, Office of United States

Generalized System of Preferences:

2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Child restraint systems; comments due by 9-26-05; published 8-26-05 [FR 05-16782]

Airworthiness directives:

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

CENTRAIR; comments due by 9-26-05; published 8-22-05 [FR 05-16529]

Grob-Werke; comments due by 9-26-05; published 8-26-05 [FR 05-16986]

McDonnell Douglas; comments due by 9-26-05; published 8-11-05 [FR 05-15881]

New Piper Aircraft, Inc.; comments due by 9-26-05; published 7-26-05 [FR 05-14389]

Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa; comments due by 9-29-05; published 8-10-05 [FR 05-15803]

Rolls Royce plc; comments due by 9-26-05; published 7-28-05 [FR 05-14803]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Motor vehicle safety standards:

Bus emergency exits and window retention and release; comments due by 9-26-05; published 8-12-05 [FR 05-16016]

Fuel system integrity; upgraded rear and side impact tests; phase-in requirements; comments due by 9-26-05; published 8-10-05 [FR 05-15691]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Credit for increasing research activities; comments due by 9-28-05; published 5-24-05 [FR 05-10236]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:

Labeling and advertising; wines, distilled spirits, and malt beverages; comments due by 9-26-05; published 6-23-05 [FR 05-12396]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 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)

Last List August 13, 2005

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.